TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]41

CRESCENT COTTON OIL COMPANY, PLAINTIFF IN ERROR,

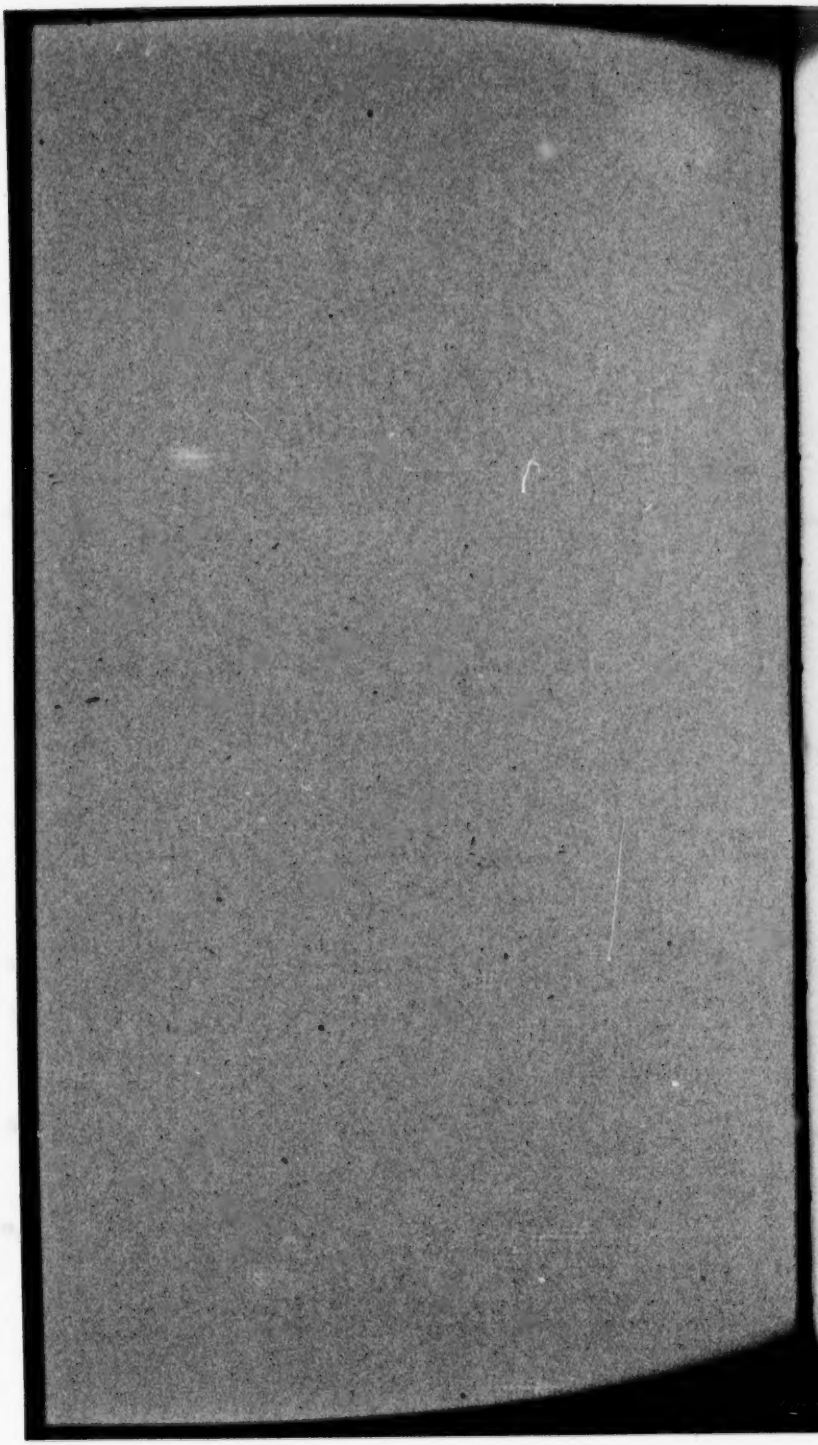
vs.

THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED MAY 8, 1922.

(27,652)



(27,652)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 320.

RESCENT COTTON OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 7, 1920.

1 Supreme Court of Mississippi, October Term, 1919.

Pleas and Proceedings Had and Done at a Regular Term of the Supreme Court of the State of Mississippi, Begun and Held at the Court Room in the City of Jackson, State of Mississippi, at the Capitol, on the Second Monday of October, Being the 13th Day of October, 1919.

Present and presiding Honorable Sydney Smith, Chief Justice; Honorable Sam C. Cook, Honorable Geo. H. Ethridge, Honorable Eugene O. Sykes, and Honorable J. B. Holden, Associate Justices; Geo. C. Myers, Clerk, and C. L. Johnson, Marshal.

Be it remembered that heretofore, to-wit on the 25th day of August, 1919, there was filed in the clerk's office of said Supreme Court a certain record on appeal from the Chancery Court of Sunflower County, Mississippi, which with the endorsements thereon is in words and figures following to-wit:

2 In the Chancery Court of Sunflower County, Mississippi.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

To the Honorable Chancery Court of Sunflower County, Mississippi:

The Complainant, The State of Mississippi, on the relation of her Attorney General, Ross A. Collins, complains of the Crescent Cotton Oil Company, a corporation created under the laws of the State of Tennessee, and having its domicile and chief place of business at Memphis, Tennessee, and also doing business in the State of Mississippi, and having filed its charter under the laws of the State of Mississippi, with the Secretary of State, and having paid the statutory fee for filing of said Charter enabling it to do business in the State of Mississippi and having a place of business at Ruleville, in Sunflower County in said State at which point it operates a cotton ginning plant and outfit and having a manager in charge of said plant at said point; to-wit: C. E. Shelton, upon whom process may be served in the said State and County; and shows unto the Court that the said Crescent Cotton Oil Company and the said C. E. Shelton, its manager and agent, are now doing a ginning business for hire and a business of buying and selling cotton seed, bagging and ties and other accessories to the ginning business and have been doing said business at said point for several years past and especially since the 28th day of March, 1914.

The Complainant further shows that at the 1914 Session of the Legislature of the State of Mississippi, an act was passed entitled,

"An Act to prohibit cotton seed oil companies and cotton
3 compress companies, and other persons, associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton seed products and by-products and Compresses from owning, buying, leasing or operating any cotton gin in this state, or from selling cotton, bagging, cotton ties, and for other purposes," said Act being approved on the 28th day of March, 1914, and being and constituting Chapter 162, of the laws of 1914, of said Acts of the Legislature, published by authority; and shows further that in said Chapter it is provided that it is unlawful for any corporation created under the laws of this State, or authorized to do any local business in the State under the laws thereof to own, buy, lease, rent or otherwise acquire any cotton gin or any interest therein, or to manage, use or control or operate the same, where such corporation is now, "(referring to the time of the passing of the Act)" or may hereafter become interested in the operation, ownership, management, or control, or participate in the manufacture of any cotton seed oil or any of its products or by-products, or in the manufacture of cotton seed meal, hulls, or other cotton seed products or by-products, or which owns, or operates or manages or in any manner controls or has any interest in any compress business or concern or corporation and prohibits any person who is interested in any cotton oil Company or cotton seed meal Manufacturing Company either in person or as Trustee, directly or indirectly become a stockholder or manager of any corporation doing a ginning business or have the management or control of such gin as Trustee or otherwise with an exception that the cotton seed oil business, or compress may operate ginneries not exceeding six hundred saws, but such ginneries must be located in the City or Town of the location of its cotton oil plant or compress, and providing that such ginneries so authorized shall not be operated for the purpose of destroying the
4 gin business, and providing a penalty of not less than $100.00 nor more than $5,000.00 to be recovered at the suit of the State by attachment in Chancery and in addition shall forfeit its Charter or right to do business in the State, and providing that any concern prohibited by this Act from owning or operating gins, is at liberty to dispose of said gins either for cash or credit within a reasonable time after the passage of said Act, and to operate the gins until sold within a reasonable time.

Complainant further says that the said Crescent Cotton Oil Company is engaged in the manufacture of cotton seed oil and also in the manufacture of cotton seed meal and has been during the entire time since the passage of the said Act and therefore comes within the statute prohibiting them or it from owning or operating or managing any cotton gin establishment.

Complainant also charges that the said Defendants, during said time, have been engaged in the business of ginning cotton for hire for the public generally at Ruleville, Mississippi and at various other points in the State of Mississippi, and have been engaged in selling cotton bagging, cotton tires, and other things required for the operation of the ginnery and have been engaged in the business of buying

cotton seed and cotton seed products in the said State at various and divers points and at Ruleville, Mississippi, in violation of the said Acts.

Complainant further charges that under the Charter granted the Defendant, the Crescent Cotton Oil Company, it has no power under its charter to acquire, own, lease, or operate a cotton gin in any manner whatever and that it has no such rights conferred by the laws of this state but that such acts are absolutely prohibited by the laws of this State.

Complainant shows further that more than a reasonable time has expired since the passage of the said Act in which to dispose of its gin plant in the State of Mississippi at a fair and reasonable
5 value and has in fact been offered more than the value of the gin plant at Ruleville, Mississippi, by parties in this State, said parties offering to buy the said plant and agreeing to give its full value and even more than its full value and requesting the defendant, the said The Crescent Cotton Oil Company, to name a price at and for which it would sell its said gin plant for cash, stating at said time that they were willing and ready to pay cash and would pay the full value and even more than the full value of the said property if the said Defendant would sell the same, but the said Defendant notwithstanding its duty to sell its said plant at Ruleville, Mississippi, and at other points in the State of Mississippi, and notwithstanding it had no authority to operate the same or to own the same under the laws of this State and under its charter powers, refused absolutely to sell said property or to name a price at which they would sell said property.

Complainant further shows that several different parties have made to the said Defendant, the Crescent Cotton Oil Company, a fair and reasonable offer in cash for its said ginning plant and outfit but notwithstanding said offers were made in good faith and notwithstanding said parties were ready and willing to pay the full value of the said gin plant and outfit, the said Defendant refused and still does refuse to sell the same or to make any offer or any statement as to what its value is and what sum would be sufficient to purchase the same.

Complainant further charges that the said Crescent Cotton Oil Company and its manager aforesaid, are engaged in an attempt to destroy the gin business in the State of Mississippi, and have been continuously so engaged since the 28th day of March, 1914, with the intent and for the purpose of destroying competition in the gin business in violation of said Chapter 162, of the Laws of 1914, and also in violation of Chapter 119, of the Laws of 1908, and
6 especially Clauses "*m*," "*n*" and "*o*" of the said Act by ginning cotton at a less price than the cost of ginning with the purpose and with the intent of destroying competition in the ginning business at Ruleville, Mississippi, (there being at said Town of Ruleville two other ginning plants engaged in the ginning business) in violation of the laws above mentioned.

Complainant further avers that under Chapter 204 of the Laws of 1908, the Chancery Court is given jurisdictioon to entertain suits involving the violation of the anti-trust laws and under Chapter 162,

it is given jurisdiction to entertain suits for violating the provisions of that law and therefore the Chancery Court is the proper forum in which to bring suit for the correction of said evils and the enforcement of the remedies given by law for said purpose which includes injunction and attachment which may be entertained by the Chancery Court for violating said acts.

Complainant further shows unto the Court that, as a subterfuge and evasion on the part of the Defendants for the purpose of escaping the penalties imposed by said statute, the Defendants have caused signs to be painted at the ginnery at Ruleville, Mississippi, giving the name of "The Farmers Gin Company" to its said plant at Ruleville, Mississippi, but shows that in truth and in fact there is no *cpropr*ation chartered in the State of Mississippi, known as the Farmers Gin Company and that there is no charter on file showing the corporation of any foreign State authorized to do business in the State of Mississippi, and that there is no partnership or individual ownership of said gin plant but that the said gin plant at Ruleville, Mississippi, is in truth and in fact owned, managed and controlled and operated by the defendants in this suit in violation of the laws of this State and that the State of Mississippi has a right to have the penalties of said Act, Chapter 162, of the Laws of 1914, enforced against the Defendants in this suit, and to have decreed a
7 penalty of $5,000.00 against said defendants for violating the said law and to have the right of said defendants to do business in this State forfeited and the right to an injunction against the Defendants pending said suit for further violation of the laws of this State pending the decision of the Chancery Court and on final hearing to have said injunction made perpetual:

Wherefore, the premises considered the Complainant prays that the said defendants named in this bill be made parties defendant to this suit and the proper legal process issue as required by law commanding the Defendants and each of them to be and appear before the Honorable Chancery Court of Sunflower County, Mississippi, at the regular December Term, 1915, on the 2nd Monday of December, 1915, to plead, answer or demur to this bill and that a temporary restraining order be issued on the filing of this bill prohibiting, enjoining and restraining the Defendants from operating the said gin at Ruleville, Mississippi, and from operating any other gins in the State of Mississippi, and that a writ of attachment issue to be served upon the defendants in this suit in the manner required by law so as to seize and bind the effects of the defendant, the Crescent Cotton Oil Company, within the jurisdiction of this Court and that on final hearing, that the Court will grant the Complainant a decree making the temporary injunction permanent and sustaining the attachment herein prayed for and sued out, and that the Court will enter a decree for the penalty of $5,000 for the violation of Chapter 162 of the Laws of 1914, and that it will forfeit the right of the said Crescent Cotton Oil Company to do business in this State and perpetually enjoin the said corporation from doing further business in this State and that the court will appoint a receiver to take charge of the property of the Defendants in this State and sell the same in

such manner as the Court deems for the best interest of all
8 parties concerned and direct the said Receiver to pay such judgment for all penalties and the cost of this suit as the Court shall see proper to impose, and if mistaken in the relief prayed, that the Court will grant such other and further relief as the facts stated may warrant in equity and in duty bound, complainant will ever pray, Etc.

THE STATE OF MISSISSIPPI EX REL.
ROSS A. COLLINS,
Attorney General,
By GEO. H. ETHRIDGE,
Assistant Attorney General.

STATE OF MISSISSIPPI,
Hinds County:

Personally appeared before me, the undersigned in and for the said State and County, George H. Ethridge, Assistant Attorney General, who being duly sworn, states upon information and belief that the facts stated in the foregoing bill are true and correct as therein stated and set forth.

GEORGE H. ETHRIDGE.

Sworn to and subscribed before me, this the 9th day of October, 1915.

J. M. STEVENS,
Justice Supreme Court of Mississippi.

Fiat.

The State of Mississippi to the Chancery Clerk of Sunflower County, Mississippi:

It appearing to the undersigned, a Judge of the Supreme Court of the State of Mississippi, that the Complainant is entitled to a temporary restraining order and a writ of attachment in Chancery without bond, you are directed therefore upon the filing of the foregoing bill, to issue a writ of injunction restraining the defendants from further operating a gin or gins in the State of Mississippi,
during the pendency of this suit and also issue an attachment
9 in Chancery to be served upon the Defendants and a summons (or publication in case the defendants cannot be found) to be and appear before the Honorable Chancery Court of Sunflower County, Mississippi, on the 2nd Monday of December, 1915, to plead, answer or demur to this suit.

Witness my official signature, this the 9th day of October, 1915.

J. M. STEVENS,
Associate Justice Supreme Court of Mississippi.

Endorsed: Filed Oct. 11th., 1915. A. P. Stubblefield, Clerk, by W. R. French, D. C.

The State of Mississippi to Crescent Cotton Oil Co., C. E. Shelton, Mgr. and Agent, Ruleville, Mississippi, Greeting:

Whereas, State of Mississippi, Ex Rel. Ross A. Collins Attorney General this day filed a Bill of Complaint in the Chancery Court of Sunflower County, among other things touching the matters and things hereinafter specifically referred to and having obtained from the Honorable J. M. Stevens, Associate Justice of the Supreme Court of Mississippi, his Fiat for an injunction in said cause to the extent and for the reasons set forth in their said bill of complaint; and bond, with surety, having been given as required by the law and the Fiat aforesaid, we, therefore, enjoin and require of you, your agents, attorneys and representatives, absolutely and without delay, to cease and refrain from operating a gin at Ruleville, Mississippi, and from operating any other gin or gins in the State of Mississippi, and from all other actings and proceedings in any wise connected
10 therewith, or with the matters and things set forth and alleged in the aforesaid Bill of Complaint, until the further order of said Chancery Court and this you shall in no wise omit, under the penalty of what may befall in that behalf.

Witness my hand as Clerk, with the Seal of said Court thereto affixed, this the 11th day of October, A. D. 1915.

A. P. STUBBLEFIELD,
Clerk,

[SEAL.] By W. R. FRENCH, *D. C.*

To the sheriff or coroner of Sunflower County, to execute and return.

A. P. STUBBLEFIELD,
Clerk,
By W. R. FRENCH, *D. C.*

State of Mississippi to the Sheriff of Sunflower County, Greeting:

Whereas, The State of Mississippi, Ex Rel. Ross A. Collins, Attorney General, has complained on oath to me that Crescent Cotton Oil Co., C. E. Shelton, its manager and agent are justly indebted to the said State of Mississippi, Ex Rel. Ross A. Collins, Attorney General, to the amount of Five Thousand Dollars, and pray an attachment under Chapter 162 of the Laws of 1914.

Bond and security being not required by the statutes of this State, we, therefore command you to attach said Crescent Cotton Oil Company, C. E. Shelton, its Manager and agent, by taking into your possession their estates, real and personal in your County, to the value of the said demand and costs of suit, and that you safely keep the same according to law, so as to compel the said Crescent Cotton Oil Company, C. E. Shelton, its manager and agent, to ap-
11 pear before the Chancery Court to be held at Indianola, in and for said County of Sunflower, on the second Monday in December, A. D., 1915, to appear and answer accordingly.

And have you then and there this Writ with your endorsement thereon showing how you have executed the same.

Witness my hand as Clerk, with the seal of said Court hereto affixed this the 11th day of October, A. D., 1915.

A. P. STUBBLEFIELD,
Clerk,

[SEAL.] By W. R. FRENCH, *D. C.*

I have this day executed the within writ by going upon the premises of the said defendant in the Town of Ruleville, County of Sunflower, and there declaring at the time that at the suit of the State of Mississippi, Ex Rel. Ross A Collins, Attorney General, Plaintiff, I attached the gin plant as the property of the said defendant, the Crescent Cotton Oil Company, and delivered to said defendant, through its Manager and Agent, C. E. Shelton, in person, a true copy of this writ.

This the 11th day of October, 1915.

R. C. GARNETT,
Sheriff,
By C. E. SANDRIDGE, *D. S.*

Ser.	2.00
E. & R.	.50
Bond	.50
	$3.00

Released attachment on the Defendants entering into bond for Ten Thousand Dollars, said bond being hereto attached.

This October 15th, 1915.

R. C. GARNETT,
Sheriff.

12 STATE OF MISSISSIPPI,
Sunflower County:

Know all men by these presents: That we, Crescent Cotton Oil Company, a corporation chartered under the laws of Tennessee and authorized to do business in the State of Mississippi, and C. E. Shelton, principals, and the United States Fidelity and Guaranty Company, a surety Company, authorized to make judicial bonds in the State of Mississippi, Surety herein bind ourselves to pay to the State of Mississippi the sum of Ten Thousand Dollars (10,000), unless above bound Crescent Cotton Oil Company and C. E. Shelton, shall have forthcoming to avide the decree of the Chancery Court of Sunflower County, Mississippi, in the suit by attachment therein pending in which the State of Mississippi, ex rel. Ross A. Collins, Attorney General, is plaintiff and the said Oil Company, and the said Shelton are defendants, returnable on the Second Monday in December, 1915, a certain Cotton Gin outfit and appurtenances levied on by the Sheriff of said County by virtue of said attachment and

valued by him at Five Thousand Dollars, and now restored to the said Crescent Cotton Oil Company and C. E. Shelton; or in default thereof, shall satisfy such judgment as may be rendered by the said Court against said Oil Company and C. E. Shelton, to replevy which said property this bond is given.

Witness our hands this the 14th day of October, 1915.

CRESCENT COTTON OIL CO.,
By A. W. SHANDS, *Attorney in Fact.*
UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
By L. N. JULIERRE (?), *Attorney in Fact.*
GREEN & GREEN (?), *Attorney in Fact.*

I approve the above and security this 15th day of October, 1915.
R. C. GARNETT,
Sheriff.

Filed October 15th, 1915. A. P. Stubblefield, Ch'y Cl'k, by W. R. French, D. C.

13 *Summons.*

Chancery Court.

No. 2721.

THE STATE OF MISSISSIPPI,
Sunflower County:

To the Sheriff of Sunflower County, Greeting:

You are hereby commanded to summon Crescent Cotton Oil Company, C. E. Shelton, Mgr. and Agent, if to be found in your County, to be and personally appear before the Chancery Court of Sunflower County, at the Court House of said County, in the Town of Indianola, on the Second Monday in December, 1915, then and there to plead, answer or demur to the bill of Complaint, of State of Mississippi, Ex Rel. Ross A. Collins, Attorney General, wherein they are Defendants.

Herein fail not, and have you then and there this Writ.

Issued under my hand and seal of said Court, at office in the Town of Indianola, Mississippi, this the 11th day of October, 1915.

A. P. STUBBLEFIELD,
Clerk,

[SEAL.] By W. R. FRENCH, *D. C.*

In the Chancery Court of Sunflower County, Mississippi.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY and C. E. SHELTON, Manager and Agent.

It is agreed between George H. Ethridge, Assistant Attorney General, representing the State of Mississippi, and A. W. Shands, representing the Crescent Cotton Oil Company, as follows:

14 That upon the execution and delivery by the Crescent Cotton Oil Company of a Bond in the penal sum of Ten Thousand ($10,000.00) Dollars, payable to the State of Mississippi conditioned as required by statute in such cases, that the property of the said Crescent Cotton Oil Company, to-wit: Their ginning Plant and appurtenances heretofore seized by writ of attachment by the Sheriff of Sunflower County in the above styled cause, shall be released to the owners thereof, the said Crescent Cotton Oil Company;

Whereas, it appears that at Love Station, Mississippi, the Crescent Cotton Oil Company is the owner of the only gin equipped for ginning cotton, and a great hardship would be worked upon the farmers of that community in the event this gin should remain shut down until the conclusion of this litigation; and

Whereas, The State of Mississippi is not required to give bond to indemnify the Crescent Cotton Oil Company from any damage which they may sustain on account of the suing out of the injunction in the event the same should be adjudged to have been wrongfully sued out but that an irreparable injury would be inflicted upon them in the event they succeeded in dissolving the injunction heretofore sued out.

Therefore, in order that justice may be done to all parties, and no hardship should be inflicted upon the ginning public, it is agreed between the parties hereto that the operation of the gins at Ruleville and at Love Station in the State of Mississippi, by their owners, the Crescent Cotton Oil Company, during the ginning season of 1915-1916 shall not be taken or considered as a contempt of Court because of the violation of the provisions of the injunction above referred to, it being, however, distinctly understood that under this agreement they shall not have the right to operate their gins longer than during the season of 1915-1916, but the injunction shall remain in full force except as modified above.

15 This agreement is this day executed in triplicate, one copy of which shall be filed and numbered and styled in the style and number of this cause and become a part of the record thereof in the Chancery Court of Sunflower County, Mississippi.

Witness the signatures of the respective Solicitors above mentioned, this the 14th day of October, 1915.

GEORGE H. ETHRIDGE,
Solicitor for State of Mississippi.
A. W. SHANDS,
Solicitor for Crescent Cotton Oil Co.

Filed October 15th, 1915. A. P. Stubblefield, Chancery Clerk, by W. R. French, D. C.

Answer of Defendants.

In the Chancery Court of Sunflower County, Mississippi, at the December, 1915, Term Thereof.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

Now comes the Crescent Cotton Oil Company, and C. E. Shelton, summoned to make answer to the Original Bill herein filed against them, and reserving to themselves all exceptions which may be taken to the many irregularities and insufficiencies in said bill, for answer thereto, or to so much as they are advised it is necessary or proper for them to make answer to, answering say:

That they admit that the Crescent Cotton Oil Company is a corporation, created and existing under and by virtue of laws —
16 the State of Tennessee, which is a State of the United States, and that it has filed its charter in the State of Mississippi, and complied with all the provisions of law in force authorizing it to do business in the State of Mississippi, and that it paid to the State of Mississippi the fee required by the said State to be paid for permission to do business under its Tennessee charter in the State of Mississippi; which said fee was by the State of Mississippi through its properly constituted authorities received, and by the said State of Mississippi applied to its own uses and purposes, and still retained by the said State of Mississippi:

Respondents further answering admit that the said Crescent Cotton Oil Company has a place of business — Ruleville, in the State of Mississippi, and that respondent, C. E. Shelton, is the manager of said business at Ruleville, and that it is now doing a ginning business for hire and is engaged in the business of buying and selling cotton seed, bagging and ties and other accessories to the cotton ginning business at said place, and has been so engaged for several years past, and was so engaged on the 28th day of March, 1914, and had been for sometime prior thereto, and would show that it, the said Crescent Cotton Oil Company, had in order to do said business pursuant to the authority granted to it by the State of Mississippi, as

aforesaid, and relying upon said authority, invested large sums of money in purchasing machinery, building buildings and securing land on which to build said cotton gin, preparatory to doing a cotton ginning business, and that the said property is worth much less for any other purpose than for the purpose of ginning cotton, and that to prevent the said respondent from using the property therefor would be to deprive the said respondent of its property
17 without due process of law, in violation of the Constitution of the State of Mississippi, and the Constitution of the United States of America.

Respondents further answering admit that at the 1914 session of the Legislature of the State of Mississippi, an Act was passed entitled, "An Act to prohibit cotton seed oil companies and cotton compress companies, and other persons, associations, and corporations, engaged in the manufacture or refining of cotton seed oil and its products, and making and manufacturing cotton seed meal and other cotton seed products and by products, and compresses from owning, buying, leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties and for other purposes;" that said Act was approved on the 28th day of March, 1914, and was published as alleged in said original bill, and constitutes Chapter 162 of the Laws of 1914, to which Respondents here refer for the provisions of said act.

Respondents further answering admit that the Crescent Cotton Oil Company is engaged in the manufacture of cotton seed oil and also in the manufacture of cotton seed meal and has been during the entire time since the passage of the said act, and that it comes within the class prohibited by the said Act from owning and operating or managing any cotton gin establishment in the State of Mississippi, but says that the said respondent is not prohibited from so operating gins by the laws of the State of Mississippi; and would show that the said Act being Chapter 162, of the Laws of 1914, undertakes to prohibit a corporation engaged in the manufacture of cotton seed oil and other cotton seed products from owning, managing or operating a cotton ginning establishment in the State of Mississippi, but does not prohibit an individual who may be engaged in the manufacture of cotton seed oil and other cotton seed products from owning, managing or operating a cotton ginning establishment
18 that the only privilege denied by the said act to an individual engaged in the said business in which the respondent Crescent Cotton Oil Company is engaged, is the privilege of becoming a stock holder in a corporation engaged in the ginning business or of having the management and control of a corporation owned gin, and that the said Act denies to this respondent the equal protection of the laws, guaranteed to it by the Constitution of the State of Mississippi, and by the Constitution of the United States of America, and is unconstitutional and void.

Respondents further answering say that they admit that during said time, it has been engaged in ginning cotton for hire for the public generally at Ruleville, and at Love Station in the State of Mississippi, but denies that it has been engaged in the ginning of

cotton at any other places in the State of Mississippi; and that it has been engaged in the selling of cotton bagging ties and other things required for the operation of the Ginnery to people who gin with this Respondent, but deny that it has been so engaged in selling to others; and admits that it has been engaged in buying cotton seed in a number of places in the State of Mississippi, but denies that it has been engaged in buying cotton seed products at any place in the State of Mississippi.

Respondents further answering deny that it has no power under its Charter to acquire, own, lease, or operate a Cotton gin in any manner whatever, but would show that such power is clearly granted by its charter, a copy of which is herewith filed, marked Exhibit "A" and asked to be taken and considered as a part of this Bill, the original certified copy of which will be introduced on the hearing hereof; and denies that no such rights are conferred by the laws of the State of Mississippi, or that such acts are absolutely pro-
19 hibited by the laws of the State of Mississippi, and would show the truth to be that it has under the laws of the State of Mississippi, all rights conferred on it by its Charter, and the right to operate a gin, is one of these rights.

Respondents deny that the said Crescent Cotton Oil Company has ever been offered a reasonable value for its gin plant at Ruleville, Mississippi, and denies that either of them know of any one who will pay in cash a full value for same even if the property was hawked about for sale, and would show that in a proceeding in which a subdivision of the State of Mississippi was complainant and the said Oil Company Defendant, it was adjudged by a Court of the State of Mississippi of competent jurisdiction that the said Gin plant at Ruleville, if offered for sale for cash should sell for ten thousand dollars, and the said property was thereupon by the said State of Mississippi through its duly constituted authorities assessed for taxation at ten thousand dollars, and respondent forced to pay taxes thereon at said valuation; and that the said State of Mississippi is now estopped to place a lower valuation thereon; and respondent has never been able to get anything like this amount offered for the said property.

Exhibit "A."

Respondent further answering would show that the value of its gin plants operated in the State of Mississippi, at Ruleville, exclusive of the real estate and railroad sidings, is $9,877.89, and the value of its gin plant at Love, exclusive of the real estate and railroad sidings, is $6,788.60, and the value of the real estate at Love and the side tracks at Love and Ruleville is $1,500.00, making the total cash value of the two properties in the State of Mississippi
20 $18,166.49.

Respondents further answering would show that the defendant, Crescent Cotton Oil Company has been willing to dispose of the said properties at this price, and has endeavored to do so, but without success, and in order that there might be no doubt as to the

bona fides of its willingness so to dispose of the said plants, as proposed in writing to the attorney general, representative of the State of Mississippi, to make deed conveying said properties to any person who would pay to the said Crescent Cotton Oil Company the said sum of $18,166.49; but neither this respondent nor the Attorney General, so far as this respondent has as yet been informed, has ever been able to find a purchaser for the said properties at their fair reasonable value.

Respondent would further show that this value was ascertained by expert appraisers, skilled in valuation of this kind, and not made for the purposes of this suit but made for the purpose of ascertaining the real value of the said properties; and here charges that to require this respondent to sell for a less value or to penalize it for not selling for less value would be to deprive this respondent of its property without the due process of law in violation of the provisions of the constitution of the State of Mississippi and of the Constitution of the United States of America.

Respondents further answering deny that several different parties have made to respondents fair and reasonable offers for the gin property at Ruleville and Love Station, and says that the fair cash value of said property has been judicially determined by the State of Mississippi, as above set out. Respondents do admit that some
21 fair offers were made to your respondents or rather some propositions, but such were made for the purpose of enabling the proposed purchasers to destroy all competition in the ginning of cotton at Ruleville, and would show that on the day after the writ of injunction was served on these respondents and their gin shut down, that the competitors of respondents at Ruleville doubled their charge for ginning; that such doubled charge was an unreasonable and oppressive charge, but was maintained by them until respondents were enabled by virtue of the agreement made with the Attorney General to again start their gins, and is still so maintained, that such offers were made for the purpose of enabling the proposed purchasers to create an unlawful trust and combine in the ginning business at Ruleville, to the detriment of these respondents and the public generally.

Respondents further answering, deny that they or either of them are now engaged in an attempt to destroy the gin business in the State of Mississippi, or that they have been either continuously or at any time so engaged since the 28th day of March, 1914, with the intent or for the purpose of destroying competition in violation of Chapter 162 of the Laws of 1914, or in violation of Chapter 119, of the Laws of 1908, or clauses "*m*," "*n*" *or* "*o*" of the said Act, by ginning cotton at a less price than the cost of ginning with the purpose or intent of destroying competition in the ginning business at Ruleville, Mississippi, and deny the doing of any act which is a violation of Chapter 119, of the Acts of 1908.

Respondents admit that under Chapter 204, of the Laws of 1908, the Chancery Court is given jurisdiction to entertain suits involving the violation of the anti-trust laws of the State of Mississippi, but

would show that neither of these respondents have been
22 guilty of any act in violation of the antitrust laws of the State of Mississippi, with which they have been charged in the original bill herein.

Respondents further admit that Chapter 162 of the Laws of 1914 gives the Chancery Court jurisdiction to entertain suits for violation of the provisions of that Act, but expressly provides for a penalty "to be recovered at the suit of the State by attachment in the Chancery Court," and here charges that such specific denomination of remedy excludes all other remedies in this Court, and would show that nowhere is the right to an injunction given to the State for an alleged infraction of this act, but that the act creating the offense in express terms prescribed and points out the remedy and penalty for its violation, and that this Court is without authority to issue an injunction against a violation of the provisions of this act.

Respondents further answering, says that while it is true that Chapter 204, of the Laws of 1908 confers jurisdiction on the Chancery Court to enforce the anti-trust statutes of the State, this means for it to enforce them according to the rules of practice in a Court of Chancery, and that the attachment herein sued out in Chancery can not be maintained for a violation of the anti-trust statutes because there is no allegation in the bill, nor is affidavit elsewhere made in this record, either that the respondents have any real estate in this State or that any one in the State is indebted to respondents, conditions precedent to the suing out of an attachment in Chancery, except for the violation of statutes expressly providing that attachment shall be the proper remedy, and respondents say that this Court can not retain jurisdiction of the attachment herein sued out, on the ground of a violation of any of the anti-trust statutes
23 of the State of Mississippi.

Respondents further answering admit that they had a sign painted at their ginnery at Ruleville giving the name of the Farmers' Gin Company, but would show that this name was given simply as an aid in book-keeping, as the Manager of the gin was charged up with supplies furnished him for the gin, and it was easier to keep the account on the books of the Crescent Cotton Oil Company, giving this gin another name; that these respondents never claimed that The Farmers Gin Company was a corporation, that they never applied for a charter for the gin separate from the Crescent Cotton Oil Company, and never desired one, and deny that the giving or painting of such name was in fact or intended to be an evasion or subterfuge for the purpose of escaping any penalties imposed by the said Chapter 162 of the Laws of 1914; that soon after the passage of the said Act, the Respondent Crescent Cotton Oil Company, applied to its attorney, the Hon. Calvin Perkins, now of Memphis, an attorney at law, licensed under the laws of the State of Mississippi, and well and favorably known as an authority on such questions, for advice as to the constitutionality of the said statute, and was by the said Attorney, in a written opinion, a copy of which is herewith filed, advised that as to gin property owned at the time of the passage of the act, the same was unconstitutional and void; that the said Cres-

cent Cotton Oil Company relied upon this opinion, and never took any steps to evade any of the penalties of the said act, and never did believe and do not now believe that the act can be made to apply to it so as to deprive it of the profitable enjoyment of property owned by it by the sanction of the laws of the State of Mississippi, at the time of the passage of the said act. The said opinion is made Exhibit "B."

24 And now having fully answered these respondents pray that the injunction herein issued may be by decree of this Honorable Court dissolved, and the attachment herein levied may be likewise discharged, and the original bill herein dismissed and these respondents be permitted to go hence without day, with their reasonable costs in this behalf most unjustly incurred.

A. W. SHANDS,
Solicitor for Respondents.

STATE OF TENNESSEE,
Shelby County:

Before me the undersigned Notary Public in and for the aforesaid County and State, this day personally appeared A. Boyd, to me well known who being by me first duly sworn on oath says that he is Secretary and Treasurer and Manager of the Crescent Cotton Oil Company, defendant in this cause, and that the allegations of the foregoing bill are true as stated.

A. BOYD.

Sworn to and subscribed before me this 8th day of December, 1915. In witness whereof, I have hereunto set my hand and seal.

[SEAL.] J. A. HEARD,
Notary Public.

My Commission expires on the 27th day of January, 1917.

State of Tennessee.

Department of State.

To all to whom these presents shall come, Greeting:

I, R. R. Sneed, Secretary of State of the State of Tennessee do hereby certify that the annexed is a true copy of Charter of Incorporation of the "Crescent Cotton Oil Company," as recorded on Corporation Record-Book U U, Page 124, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this twenty-six- day of November, A. D., 1915.

[SEAL.] R. R. SNEED,
Secretary of State.

State of Tennessee.

Charter of Incorporation.

Be it known, That by virtue of the general Laws of the land, we, citizens of the State of Tennessee, not under Twenty one years of age, to-wit: Alston Boys, L. E. Dyer, C. E. Tucker, J. H. Malone and Irby Boyd, are hereby constituted a body politic and corporate, by the name and style of "Crescent Cotton Oil Company", organized for the purpose of manufacturing Oil and meal and lint from cotton seed and for manufacturing into numerous forms the said oils or the said meal or lint or any part thereof, and for the purpose of buying and selling cotton seed or the products thereof, and for dealing in such utensils and machinery as may be proper and appropriate for the manufacture, handling, growth and manipulation of cotton or cotton seed and the products thereof.

The general powers of said corporation are, to sue and be sued by the corporate name, to have and use a common seal, which it may alter at pleasure, if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift, in addition
26 to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment or part payment of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the law and constitution deemed expedient for the management of corporate affairs, and to appoint such subordinate officers and agents in addition to a President and Secretary or Treasurer, as the business of the corporation may require, designate the name of the office and fix the compensation of the office.

The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for, or transfer of stock; fix upon the amount of capital stock to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by subscribers for stock; the amount to be called for at one time, and in case of failure of any stock-holder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same. It shall have power to raise, buy, sell and deal in agricultural products, operate oil and other mills and deal in merchandise.

The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for

works of internal improvement, as set forth in Sections 1325
27 to 1348 inclusive of the Code, to condemn a right-of-way necessary for the transaction of the corporate business, not exceeding Thirty feet in width, over the lands of any private person or corporation, and such right of way is hereby declared to be a public road.

Annually, during the month of January, the President shall make and publish in a newspaper printed in the County where the principal office of business is located, or if no newspaper is printed in that County, then in an adjoining or the nearest County where a newspaper is printed, a sworn statement, showing the amount of the Capital stock and the existing liabilities and a list of the names of the stock-holders.

Nothing *by* (?) cash shall be taken in payment of any part of the Capital Stock or land at a fair cash valuation, and no loan of money shall at any time be made to any stockholder thereof, and any such loan shall render the Directors consenting thereto individually liable for the amount thereof; this liability to extend in favor of innocent stockholders as well as creditors.

The making of a false statement to be printed as aforesaid shall render all persons assenting thereto individually liable to all persons dealing or trading with said Company upon the faith of said fraudulent statement.

If the indebtedness of said Company shall at any time exceed the capital stock paid in, the Directors assenting thereto shall be individually liable to the creditors for said excess. The stockholders are justly and severally liable individually at all times, for all moneys due and owing to the laborers, servants, clerks, and operatives of the Company in case the corporation becomes insolvent.

If the Directors declare and pay any dividend when this Company is insolvent, or which declaration of a dividend would
28 diminish the amount of the capital stock, they shall be jointly and severally liable to creditors for the amount of dividends thus declared. Any director may avoid liability by voting against the dividend or by filing his objections in writing as soon as he ascertains a dividend has been made.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a Charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, the 19th day of January, 1893.

ALSTON BOYD.
L. E. DYER.
C. E. TUCKER.
J. H. MALONE.
IRBY BOYD.

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me, P. J. Quigley, Clerk of the County Court of said County, Alston Boyd, L. E. Dyer, C. E. Tucker, J. H. Malone and Irby Boyd, the within named petitioners with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand at office, this 20th day of January, A. D. 1893.

P. J. QUIGLEY,
Clerk.

STATE OF TENNESSEE,
Shelby County:

Filed for registration, January 21st, 1893 at 10:00 A. M., and noted in Note Book No. 14, page 44, and was recorded January 23rd, 1893 in Cor. Record Book No. A, Page 25. Fee $3.00 paid.

E. A. EDMONDON,
Register.

29 I, C. A. Miller, Secretary of State, do certify that the Charter and Certificate attached, the foregoing of which is a true copy, was this day recorded and certified by me.

This 24th day of January, 1893.

C. A. MILLER,
Secretary of State.

Legislative Act—Cotton Gin Bill.

In order to prevent the destruction of, or great injury to, the gin business, corporations engaged in the manufacture of cotton oil, and their directors, managers and stockholders, are prohibited from owning, operating or controlling any cotton gin.

Laws of Mississippi 1914, page 207.

The Subject of the Legislation.

I.

Oil Mills want to acquire cotton seed at the lowest prices consistent with the production of seed sufficient for the requirements of the cotton oil business.

II.

Producers of seed want to receive the highest prices therefor consistent with the consumption of all of the seed produced.

III.

Ginners want to receive the highest prices possible for ginning whether the same be paid in seed or money.

IV.

Producers of cotton want to gin for the least cost possible, whether the same be in seed or money.

V.

Oil Mills, as consumers of seed, can gin for less than other ginners by charging less for ginning and paying more for seed.

20 Consequences.

(*a*) While competition between the Oil Mills and the ginners lasts, the producers will have to pay less for ginning and will receive more for their seed;

(*b*) When the Oil Mills shall have put the ginners out of business, or shall have greatly lessened the number of ginneries, producers will have to pay more for ginning and will receive less for their seed.

(*c*) When the Legislative Act shall have put the Oil Mills out of the gin business, the producer will have to pay more for ginning, and to the extent that the number of manufacturers of Oil may be lessened by the legislation, the producer, on account of the narrowing of the field of competition among manufacturers of oil, will receive less for his seed.

(*d*) If the gin business be done away with, the producer will pay more for ginning and obtain less for his seed and, on the contrary, if the oil mills are prohibited from ginning, he will pay more for ginning and will obtain less for his seed, but not so much less as he would in case of destruction of the gin business; the Act then, in its ultimate consequences will probably produce a condition slightly more favorable to the producer than would have resulted from the law existing prior to the enactment of the statute.

(*e*) May not the Legislature, then, as between the producer on the one hand, and those who deal with the product, on the other, favor the producer at least to the extent that well informed persons shall disagree as to whether the favoritism will or will not be for the general benefit of the body politic?

(*f*) If the last proposition shall be answered in the negative, so far as individuals are concerned, it is nevertheless true, that cor-

porations, domestic and foreign, are subject to the legislative
31 will as to all of their powers, except that "no injustice shall be done to the stockholders" of domestic corporations, and, as to both classes of corporations, no law shall be enacted impairing the obligation of contracts, nor shall any state deny to any person within its jurisdiction the equal protection of the laws nor shall any person be deprived of property without due process of law.

Opinion.

In so far as the Act (*a*) prohibits such corporations from operating gins owned by them at the time of the passage of the Act; (*b*) prohibits them from operating gins on property acquired by them prior to the passage of the Act for the purposes of operating a gin thereon, such property being more valuable for gin purposes than any other; and (*c*) prohibits them from operating gins with machinery acquired for that purpose prior to the passage of the Act and in the State of Mississippi, for that purpose at the time of the passage of the Act, in our opinion the Act violates the State Constitution and the Constitution of the United States, in that it works injustice to the stockholders, denies such corporations and their stockholders the equal protection of the laws and deprives such corporations of their property without due process of law.

9/1/14.

WATSON & PERKINS.

Filed December 10th, 1915. A. P. Stubblefield, —, by R. L. Waugh, D. C.

32 No. 2721.

STATE OF MISSISSIPPI ex Rel., etc.,

vs.

CRESCENT COTTON OIL COMPANY et al.

Now comes the Defendant and moves the court to be allowed to amend its answer by inserting after the paragraph ending with the words "is one of these rights", the following:

Respondents Crescent Cotton Oil Company would show that it is engaged, and had been for a long time prior to the passage of the Act of 1914, mentioned in the said Bill, engaged in the operation of a cotton oil mill in the State of Tennessee, and in order to procure seed to run said Oil Mill, was during all of said time engaged in the buying of cotton seed in the State of Mississippi, and that all seed bought in the State of Mississippi, were shipped in interstate commerce from the State of Mississippi into the State of Tennessee.

This respondent would further show that conditions arose which rendered it impossible for a person not operating a gin to compete successfully with a person owning a gin in the purchase of cotton seed.

Respondents would show that in order to stay in the market and continue to buy seed at Ruleville, to be so shipped in such interstate commerce, it was necessary for it to acquire and operate a gin plant, which it did in 1910, and has continuously operated same since that time, and that the ownership and operation of said gin was a means and instrumentality made use of by this respondent in carrying on its business of cotton seed buyer and interstate shipper, of cotton seed, and that the operation of said gin was an incident to the business of cotton seed buyer, and was a necessary and essential incident.

33 Respondent would further show that to deprive it of the right to own and operate its gin plant will greatly burden and destroy its business of interstate commerce, in the shipment of cotton seed from the State of Mississippi, into the State of Tennessee, and would be in conflict with the commerce clause of the constitution of the United States, being Sec. 3, of Article VIII. Respondent would further show that it is now engaged in no business in the State of Mississippi and was not at the time of the passage of this act or the filing of this suit or at any other time prior thereto, except such as is necessary to acquire cotton seed and ship them in interstate commerce and incident to such business of interstate shipper of cotton seed.

Motion sustained in open court by consent of Attorney General and the answer ordered so amended.

Motion to Dissolve.

In the Chancery Court of Sunflower County, Mississippi, December, 1915, Term Thereof.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

VS.

CRESCENT COTTON OIL COMPANY et al.

Now comes the Defendants and move the court to dissolve the temporary injunction herein issued against them; and for cause for said motion, say:

1st. The original bill shows no equity, or right to have and maintain the said injunction, prohibiting the operation of gins in the State of Mississippi by defendants.

2nd. All of the allegations of the said Bill, which were made the basis for the issuance of the said injunction are denied by a sworn answer herein filed, the answer under oath not having been waived in the original bill.

34 3. Chapter 162 of the Laws of Mississippi of 1914, so far as it undertakes to prohibit these defendants from operating gins in the State of Mississippi, is unconstitutional and void.

4th. The sworn answer denies all of the allegations or charges of violations of any of the anti trust acts of the State of Mississippi.

5th. And for other causes to be assigned upon the hearing hereof.

A. W. SHANDS,
Solicitor for Respondents.

Filed December 10th, 1915. A. P. Stubblefield, Clerk, by R. L. Waugh, D. C.

Order.

No. 2721.

STATE OF MISSISSIPPI ex Rel., etc.,

vs.

CRESCENT COTTON OIL COMPANY et al.

This cause came on this day to be heard, by the Chancellor in open court, came the Attorney General, representing the State of Mississippi, and came the defendants represented by A. W. Shands, pursuant to agreement made between the Complainant and the defendant, waiving formal notice of the hearing of the motion to dissolve the injunction, which motion is on file herein.

Came the defendant and moved the court to dissolve the injunction herein issued, on bill, sworn answer, and motion; came the Attorney General and asked leave of the court to offer proof and moved the Court to delay the hearing of the motion until time should be given him within which to take testimony of witnesses in attendance upon the Court:

Whereupon, the motion of respondents to dissolve the injunction on bill, answer, and motion was by the Court, for the time being, overruled, and this cause taken under advisement, and a delay of
35 this hearing ordered, in order to allow time for the taking of proof, which order having been made ore tenus; thereupon parties complainant and defendant, in open court, agreed that the testimony of the witnesses for the complainant now present in attendance upon the court might be by the Chancellor heard their testimony taken down by Mrs. Lucile Shuttleworth, sworn as official stenographer herein, such testimony written out and filed as a part of the record in this case, the case to be retained by the Chancellor under advisement, to give him time for the taking of such other proof as might be desired by either party hereto, and to be heard finally and fully at some date in vacation, to be agreed upon between the Chancellor and the respective solicitors herein. To the action of the Chancellor in not sustaining the motion to dissolve the injunction on bill and answer, defendants note their exception.

Ordered, adjudged and decreed this the 16th day of December, A. D., 1915.

E. N. THOMAS,
Chancellor.

Decree of Chancellor.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Att'y Gen.,

vs.

CRESCENT COTTON OIL COMPANY et al.

This *day* came on to be finally heard upon the original bill and answer of defendants and the Court having heard same and argument of counsel doth adjudge that the original bill be and the same is hereby dismissed.

It is further considered by the Court and the Court doth decree that the injunction heretofore issued herein be and the same hereby is dismissed;

It is further considered by the court and the court doth now order, adjudge and decree that the attachment herein levied on the 35½ property of defendant be and hereby is discharged, and said defendant and the United States Fidelity and Guaranty Company surety on the forthcoming bond herein filed by defendant be and they are hereby discharged.

Ordered, adjudged and decreed this the 15th day of May, 1916.

E. N. THOMAS,
Chancellor.

Entered Minute Book 7, page 219.

From which judgment the Attorney General prays an appeal to the Supreme Court and tenders this his bill of exceptions, which he prays may be signed and allowed which is accordingly done, this the 30th day of May, 1916.

E. N. THOMAS,
Chancellor.

Petition for Appeal to the Supreme Court.

In the Chancery Court of Sunflower County, Mississippi.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

Petition for Appeal to the Supreme Court.

To the Honorable Chancery Clerk of Sunflower County:

Your petitioner, Ross A. Collins, Attorney General of the State of Mississippi, respectfully shows that at the December Term, 1915, a Decree was entered in the above styled cause dismissing the Bill of Complaint and decreeing against the State of Mississippi in said cause and denying the State the relief prayed for in said Bill, from which

judgment the State desires to prosecute an appeal to the Supreme Court at the ensuing term.

You are therefore, respectfully petitioned and requested to grant said appeal and send up the record and proceedings in said cause, including the Bill of Exceptions signed by the Chancellor in said cause.

36 And your petitioner, as in duty bound, will ever pray, Etc.

STATE OF MISSISSIPPI,
By ROSS A. COLLINS,
Attorney General,
By GEO. H. ETHRIDGE,
Assistant Attorney General.

STATE OF MISSISSIPPI,
Sunflower County:

In the Chancery Court, Vacation Term, A. D. 1919.

No. —.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

Tried Before Hon. E. N. Thomas, Chancellor of the 9th Chancery Court, District of Mississippi, at Greenville, Miss., in Vacation.

Appearances for the State: Hon. Frank Roberson.
Appearances for the Defendant: Hon. A. W. Shands.
A. B. Comings, Court Stenographer.

36½ *For the State.*

Mr. Robinson: We first offer in evidence the mandate of the Supreme Court in the above styled cause, marked "Exhibit "A" which is in words and figures as follows to wit:

EXHIBIT "A."

Mandate.

The State of Mississippi to the Honorable the Chancery Court of Sunflower County, Greeting:

Whereas, on the 14th day of January, 1918, the same being a day of the regular term of our Supreme Court, begun and held in the Court Room in the Capitol, in the City of Jackson, in said State on the 2nd Monday of October, in the year of our Lord, 1917, the following final decree was rendered by our Supreme Court to wit:

No. 19481.

STATE OF MISSISSIPPI ex Rel.

vs.

CRESCENT COTTON OIL COMPANY et al.

This cause having been submitted on a former day of this term on the records herein, from the Chancery Court of Sunflower County, and this Court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order, adjudge, and decree that the decree of said Chancery Court rendered in this cause at the May Term thereof, A. D., 1916, on the 15th day of May, 1916, be and the same is hereby reversed and cause remanded, and that the Appellee do pay the costs of this appeal, to be taxed, Etc.

You Are Therefore Hereby Commanded, That such execution and further proceedings be had in said cause, as according to right and justice, the judgment of our Supreme Court and the law of the land ought to be had.

Witness the Hon. Sidney Smith, Chief Justice of our Supreme Court; also the signature of the Clerk, and the seal of said court, hereunto affixed at Jackson, this the 10th day of December, A. D., 1918.

[SEAL.]

GEO. C. MYERS,
Clerk.

In Banc, Smith, C. J.

19841. 5456.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY.

The Crescent Cotton Oil Company, is a corporation created under the laws of the State of Tennessee, and domiciled in the City of Memphis, where it is engaged in the manufacture of cotton seed oil and meal, and owns and operates public cotton gins at Ruleville and other places in the State of Mississippi.

Chapter 162, Laws of 1914, Hemingway's Code, Sec. 4750, et seq., provides that a corporation engaged in the manufacture of cotton seed products shall not own, lease or operate a cotton gin in this state except "in the City or Town of the location of its Cotton Oil Plant", and that a corporation which shall, own, lease or operate a cotton gin in violation of the statute shall be subject to a penalty of not less than $100.00 nor more than $5,000.00 and in addition thereto "shall forfeit its charter, if a domestic corporation, and its right to do business in this State if a foreign corporation." The statute provides

that "a concern prohibited by this Act from owning or operating gins is at liberty to dispose of said gins for cash or credit within a reasonable time after the passage of this Act, and to operate such gins until sold within a reasonable time."

This proceeding was instituted by appellant for the purpose of recovering from appellee the penalty prescribed for the vio-
38 lation of the statute, and of revoking its right to do business in this state.

The only question presented to us by the record is the validity vel non of the statute, the decision of which will turn upon the right of the State to expel a foreign corporation which it has permitted to enter the State and which is doing business therein pursuant to such permission, and to withdraw from a domestic corporation the right to engage in a business authorized by its charter.

A state not only has the right to prohibit a corporation from entering it for the purpose of transacting business, but also to expel such a corporation from the State after it has entered and commenced doing business therein, provided only that such corporation is not thereby deprived of a right guaranteed to it by the Federal Constitution. 6 Encyl. U. S. Reps., 310; National Council U. A. M. vs. State Council, 203 U. S., 151, 51 L. ed. 132; Railroad Co. vs. State, 107, Miss. 597. The State also has the right, under Sec. 178 of the State Constitution and within the limitations of Sec. 14 thereof, to withdraw from a domestic corporation powers granted to it when chartered, provided, also, that such a corporation is not thereby deprived of a right guaranteed to it by the Federal constitution.

That the State has the right, within the limitations pointed out, to expel a foreign corporation and to withdraw from a domestic corporation power granted it, is not questioned by Counsel for appellee; their contention being that the statute deprives corporations of the equal protection of the laws guaranteed to them by the Federal Constitution and of their property without due process of law in violation of both the State and Federal constitutions. There can be no merit in either of these two contentions; for the reason, first,
39 that the State has the right to expel a foreign and to amend the charter of a domestic corporation by a special statute aimed only at the particular corporation, National Council U. A. M., v. State Council, 203 U. S. at p. 163, 51, L. ed. at p. 138 while here all corporations of the class to which appellee belongs are treated alike; and, second corporations engaged in operating cotton gins when the statute was enacted are permitted to continue so to do until they have had a reasonable time within which to dispose of them. That they may be subjected to inconveniences and hardships is not here material, such not being the criterion by which to test the constitutionality of a statute. State v. Railroad Co., 97 Miss., 135; United States v. Delaware Railroad Co., 213, U. S. 365, L. ed. 836; Delaware Etc., R. Co. v. United States, 231, U. S. 363, 58 L. ed. 269.

It follows from the foregoing views that the relief prayed for by the appellant should have been granted.

Reversed and remanded.

STATE OF MISSISSIPPI,
Hinds County:

I, George C. Myers, Clerk of the Supreme Court of the State of Mississippi, do hereby certify, that the foregoing is a true and correct copy of the opinion delivered by the Court in the cause therein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office in the City of Jackson, Mississippi, this the 18th day of March, A. D., 1918.

[SEAL.]

GEO. C. MYERS,
Clerk Supreme Court.

40 The State of Mississippi to the Honorable the Chancery Court of Sunflower County, Greeting:

Whereas, on the 14th day of January, 1918, the same being a day of the regular term of our Supreme Court, begun and held in the Court Room in the Capitol in the City of Jackson, in said State, on the 2nd Monday of October, in the year of our Lord, 1917, the following final decree was rendered by our Supreme Court, to-wit:

No. 19481.

STATE ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY.

This cause having been submitted on a former day of this Term, on the records herein, from the Chancery Court of Sunflower County, and this Court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause at the May Term thereof, A. D., 1916, on the 15th day of May, 1916, be and the same is hereby reversed and cause remanded, and that the Appellee do pay the costs of this appeal, to be taxed, etc.

You are therefore hereby commanded, That such execution and further proceedings be had in said cause, as according to right and justice the judgment of our Supreme Court and the law of the land ought to be had.

Witness, the Hon. Sydney Smith, Chief Justice of our Supreme Court; also the signature of the Clerk and the Seal of said Court, hereunto affixed, at office, at Jackson, this the 18th day of March, A. D., 1918.

[SEAL.]

GEO. C. MYERS,
Clerk.

Filed March 19th, 1919. John W. Johnson, Clerk, by McKee, D. C.

41 *Subpœna.*

The State of Mississippi to the Sheriff of Sunflower County:

You are hereby commanded to summon R. D. McLean (Doddsville) A. L. Marshall, (Ruleville), and Capt. R. W. Perry, (Ruleville), if to be found in your County, to be and personally appear before the Chancery Court of the County of Sunflower in said State, at the Court House in the Town of Indianola, Mississippi, on the 15th day of May, A. D., 1918, at 9 o'clock a. m., then and there to testify on behalf of Complainant (at whose instance this Writ is issued), in a certain cause pending in said Court wherein State of Mississippi is Complainant, and Crescent Cotton Oil Company is defendant, and that he in no wise fail to so appear under the penalty prescribed by the Statute. And have there then this Writ.

Given under my hand and the seal of said Court, and issued this the First day of May, A. D., 1918.

JOHN W. JOHNSON,
Clerk of Chancery Court,
[SEAL.] By F. B. McKEE, *D. C.*

Personally executed the within Subpœna on each of the within named witnesses, R. D. McLean, A. L. Marshall and Capt. R. W. Perry, this the 7th day of May, 1918.

J. S. WATSON,
Sheriff,
By C. W. SANDRIDGE, *D. S.*

Ser.	1.50
E. & R.	.50
	2.00

Returned and filed, this the 10th day of May, 1918. John W. Johnson, Clerk, by McKee, D. C.

42 *Subpœna.*

The State of Mississippi to the Sheriff of Scott County:

You are hereby commanded to summon Woods Eastland (Forest) if to be found in your County, to be and personally appear before the Chancery Court of the County of Sunflower, in said State, at the Court House in the Town of Indianola, Mississippi, on the 15th day of May, A. D. 1919, at 9 o'clock A. M., then and there to testify on behalf of Complainant (at whose instance this Writ is issued) in a certain cause pending in said Court wherein State of Mississippi is Complainant and Crescent Cotton Oil Company is Defendant and that he in no wise fail to so appear, under the penalty prescribed by the Statute.

And have there then this writ.

Given under my hand and the seal of said Court, and issued this the first day of May, A. D. 1918.

JOHN W. JOHNSON,
Cl'k of Ch'y Court,

[SEAL.] By F. B. McKEE, *D. C.*

Executed by personal service this the 3rd day of May, 1918.

W. T. ROBERTSON,
Sheriff.

Ex.	50 Cts.
E. & R.	50
	1.00

Returned and Filed this the 4th day of May, 1918. John W. Johnson, Clerk, by U. E. Guthrie, D. C.

43 *Decree.*

No. 2721.

STATE ex Rel. Ross A. COLLINS, Att'y Gen.,

vs.

CRESCENT COTTON OIL COMPANY et al.

Counsel for Complainants and Defendants having agreed thereto in open Court, it is ordered by the Court that the case of State ex rel. Ross A. Collins, attorney general, vs. Crescent Cotton Oil Company be taken under advisement to be heard in vacation at Greenville, on Monday June 17th, 1918.

Ordered, adjudged, and decreed this 15th day of May, 1918.

E. N. THOMAS,
Chancellor.

Testimony of W. C. Eastland.

No. 2721.

STATE OF MISSISSIPPI ex Rel. Ross A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

Agreement of Counsel for Both Sides.

By Hon. Frank Roberson, Attorney for the Complainant: We hereby agree that the testimony of this witness may be taken at this time and used on the final or any other hearing of this cause.

* * * * * * *

Order Taking Cause Under Advisement.

No. 2821.

STATE ex Rel. Attorney General

vs.

CRESCENT COTTON OIL COMPANY.

This cause coming on this day to be heard on bill, answer and proof, and the Court after hearing all of the testimony, doth order, adjudge and decree that said cause be, and the same is hereby,
44 taken under advisement for a decree to be herein rendered by the Chancellor in vacation, at the Court House in the City of Vicksburg, Warren County, Mississippi, on Tuesday, the 7th day of January, 1919.

Ordered, adjudged and decreed, this the 19th day of December, A. D. 1918.

E. N. THOMAS,
Chancellor.

Filed December 19th, 1918.

W. C. EASTLAND, witness for and on behalf of the State, being first duly sworn, on oath, deposed as follows:

Direct examination.

By Mr. Robinson:

Q. Mr. Eastland, state your initials?
A. My name is W. C. Eastland.
Q. What is your official position in the State of Mississippi?
A. I practice law at Forest, Mississippi, and am District Attorney for the Eighth Circuit Court District of the State.
Q. Do you have some agricultural and planting interests in Sunflower County, Mississippi?
A. Yes sir, I have at Doddsville, Miss.
Q. How long have you been District Attorney?
A. Eight years.
Q. Do you recollect having made a visit to Memphis in the fall of 1915?
A. Yes sir.
Q. In which you had an interview with Mr. Austin Boyd?
A. Yes, sir, I do.
Q. Just in your own way tell the court the purpose of that visit and what was done and said?
A. Just what was done?
Q. Yes, sir.
45 A. I went to Memphis in company with R. D. McClain of Doddsville, A. L. Marshall of Ruleville and Captain Perry—

went up to buy the gin plant of the Crescent Cotton Oil Co. at Ruleville, Miss. We went to the office of the Manager of the Crescent Oil Co. Mr. Austin Boyd.

Q. State the reasons why you went?

A. Well, sir, I was in Ruleville—went to my plantation at Doddsville and happened to be in Ruleville. One evening a bunch of friends told me that the Crescent Cotton Oil Co. was trying to break them in the gin business. They had demanded so many cars of seed out of Ruleville per week and if we didn't give them that many they were going to put ginning down to such a price we couldn't compete with them and they would go broke and the Crescent Cotton Oil Co. would monopolize the ginning business and asked me what we could do. I told them we had a statute prohibiting them from operating the gin provided they had an opportunity to sell the gin for actual market price and if they could get together and make up money to pay the value of the gin and go to Memphis and if the Crescent Cotton Oil Co. refused to sell the gin they could be stopped from operating under the laws of the state and they told me they had made up the money among them and asked me to go to Memphis with them. I told them I would. We went to the office of Austin Boyd, the manager of the oil mill and Mr. Boyd was very busy and in a very few minutes we got to see him and I introduced myself and told him we had come to buy his gin plant and asked him what it was worth and Mr. Boyd shook his head and said he wouldn't sell it. I told Mr. Boyd we would pay him the actual market value of the gin plant and he said he wouldn't sell it. I then told him we would pay him more than the market price and he said "I have got to have that gin as a feeder for the oil mill. If I would sell this gin I would have to get another location and I have got none and I will keep the
46 one I have got. Mr. Boyd appeared to be indignant and I left the office and came back and reported the matter to the Attorney General and he enjoined them from operating. I will also state that last court, I reckon, but anyway when this matter was to come up at Indianola Mr. Shands stated to me that Mr. Boyd says that he tried to get us to make him an offer, told us to tell him what we would pay for it. I would like to state that I don't know whether Mr. Shands was serious, or not, but all Boyd said was he would like to have it as a feeder for his oil mill.

Q. Were you in position to make the offer?

A. I don't know whether these parties could put up the money. If these other parties would not have paid for it I would have done it myself. I could and would have done it before I would lay down on it.

Q. Do you know anything about the conditions at Ruleville at the time in reference to ginning and the price of seed.

A. Not a thing in the world. I had a gin myself, but it was not anything but a plantation gin—I ginned the cotton on my own place. I had no interest in it, but these parties at Ruleville were friends of mine and asked me my opinion and I gave it to them, and they asked me to go to Memphis.

Q. Did you have any financial interest in the gins at Ruleville?

A. Not a bit in the world.

Cross-examination.

By Mr. Shands:

Q. What you know as to the gin fight that was on at Ruleville came to you as hearsay?

A. Yes, sir, that's all I know; what these parties told me.

Q. As to whether it was true or not you believed it from what you knew yourself?

A. I had known the men for years and regarded them as high-toned honorable men.

47 Q. You had no knowledge on the subject, except what they told you?

A. Not a bit.

Q. Then your statement as to that is purely hearsay?

A. Yes sir.

Q. When you went to Mr. Boyd to make him an offer did you have any idea as to what that gin plant was worth?

A. No idea on earth. I understood it was an ordinary gin plant. Don't know how many gins—four or eight. I knew the location of the gin.

Q. What figure if any did you mean to pay for it?

A. I didn't have any at all. Left that with these parties interested.

Q. Had any agreement with you been made by them as to what you would pay for the gin?

A. I don't know. I told them to be there and arrange for the money to pay the actual value of it, and I never asked them who put it up or how much or anything about that.

Q. So far as you know they didn't agree as to what the actual value was?

A. I have no knowledge—so far as I know.

Q. When you were offering to buy over the mill you had no definite amount in mind that you would offer for it?

A. No sir.

Q. When you told them you wanted to buy it you were doing that as a condition precedent to the institution of a suit against them under the anti-gin statute?

A. Yes, sir. In a sense I was. In the first place I told them to be sure they had the money—we would be in position to buy in the gin or pay the actual value, or more in the event Mr. Boyd sold it. If Mr. Boyd refused to sell it then he could be estopped from operating a gin under the laws of the State.

Q. The purpose was to lay the predicate or proof of the fact that he refused to sell?

48 A. Yes sir, the purpose really was to buy it; if he refused, then to lay the predicate for this suit.

Q. In talking with him about it you had that of course in your mind—that if he refused you would institute this suit?

A. Yes sir, sure, I knew it.

Q. Did you say anything to him about that in your conversation?

A. No sir, I did not.

Q. Did you purposely keep that back from him?

A. No sir, I went in and made him the offer—that was all I thought it was necessary.

Q. You gentlemen wanted to buy that gin.

A. I didn't; I had no use for it.

Q. I mean the parties you represented generally, they wanted to buy the gin?

A. Yes, sir, Mr. Edmundson, worth half a million at least told me some year or two before that he tried to buy the gin and they wouldn't sell it to him.

Q. You think those gentlemen genuinely wanted to acquire the ownership of the Crescent Cotton Oil Company's gin?

A. In fact, I almost know they would have been glad to buy the Crescent gin, because the gin was wrecking them.

Q. In competition?

A. Yes sir. They stated to me they were ginning cotton practically for nothing.

Q. They of course wanted to buy the gin as cheap as they could?

A. I really do not know, naturally I suppose they did.

Q. Did Mr. Boyd give any evidence of the fact he knew of the purpose of beginning this proceeding against him if he did not sell?

A. I know from his manner he never dreamed of such a thing. He stated positively he would not sell it. He said he had to have the gin as a feeder for the oil mill and he wouldn't sell it.

49 Q. Then when you tried to buy in this gin, acting as the spokesman of the committee to buy it as cheap as you could and being impressed with the fact that Mr. Boyd did not have in mind the possibility of any such suit as this, you did not call that to his attention at all?

A. No sir, I did not.

Q. In an effort to induce him to part with the gin to these gentlemen?

A. No sir, I really thought Mr. Boyd—what he said and did about it was more satisfactory.

Q. It was more satisfactory for him to refuse to sell than to have bought it?

A. Yes, sir, I wouldn't say that we couldn't use it.

Q. Didn't you prefer him refusing to sell?

A. I was representing them, there parties personally from my standpoint. I would rather he refused to sell; in fact, I want to see the law tested anyway.

Q. You were then baiting the trap?

A. Well, I suppose you might call it that. While we did it in good faith we would have paid him for the gin.

Q. And you delighted to do it?

A. Yes sir.

Q. You purposely withheld from him any intimation that a refusal to sell on his part would subject him to this prosecution?

A. I don't know what Mr. Boyd may have said if we told him, however, I do know if I had said anything more to him about buy-

ing the gin I would have been insulted, because he appeared too busy and didn't want to be worried with the matter.

Q. Did you purposely refrain from mentioning he would be subject to this suit?

A. I wouldn't have told him.

Q. You wanted to have him in the attitude of having re-
50 fused to sell?

A. I wanted those parties to make him an offer of the actual value of that gin, and then as to what he thought that was his matter; I had nothing to do with that at all. We did that and he refused to sell it.

Q. What did you offer him?

A. Couldn't offer him anything for the reason that he refused to sell it. Nothing offered him at all. He had to have the gin as a feeder for his oil mill.

Q. Mr. A. L. Marshall was with you?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. Since 1900.

Q. Do you know he was during the year 1910 and years following that a member of the Board of Aldermen of the Town of Ruleville?

A. I never knew it until I heard you say it a few minutes ago.

Q. Do you know anything about the litigation that occurred out of Mr. Marshall's getting a fire ordinance?

Objection by counsel for the state.

Court: The records would be the best evidence.

Exception by counsel for defendant.

Q. Did you have any knowledge of it?

A. No sir, didn't live at Ruleville. I live 150 miles from there.

Q. Did you have any knowledge of the valuation placed on this gin by the mayor and board of aldermen of the town of Ruleville?

A. None, whatever.

Q. When Mr. Marshall was a member of the board?

A. None whatever.

Q. Do you know what it was assessed at for taxes by that board of which Mr. Marshall was a member?

51 A. No, I don't have any idea. Know nothing on earth about assessments or values put on it by the board. Didn't know Mr. Marshall was a member of the board.

Q. Mr. Boyd was in no wise advised when you went there to propose of buying the gin from him what your reasons for wanting to purchase were or rather what your reasons for asking him to sell was?

A. No sir, he wasn't advised of anything. He was told we had come there to buy the gin and would pay him more than the market price and he refused to sell or discuss selling with us.

Redirect examination.

By Mr. Robinson:

Q. The answer of the Crescent Cotton Oil Co. alleges these offers were made by you and these other parties for the purpose of enabling you to destroy all competition in the ginning of cotton at Ruleville; please state whether or not that is true?
A. No sir, it was not.

Recross-examination.

By Mr. Shands:

Q. What was the purpose?
A. To buy the gin.
Q. Why?
A. They wanted to buy it for the reason they stated to me—I don't know which one—that Mr. Boyd or some representative told them they had to have so many cars of seed out of Ruleville per week and if they didn't ship the Crescent this seed they were going to put the prices down so they would have to quit and business was monopolized.
Q. That was the statement made to you?
A. Yes sir.
Q. You know nothing of the correctness of that statement?
A. No sir, not a thing on earth.

52 Mr. A. L. MARSHALL, witness for and on behalf of the State, being first duly sworn, on oath, deposed as follows:

Direct examination.

By Mr. Robinson:

Q. What is your name?
A. A. L. Marshall.
Q. Where do you live?
A. Ruleville.
Q. In what business were you engaged in 1914 and 1915 and since that time?
A. Largely in the—my business was planter and also have some interest in the gin business and compress.
Q. What is the name of the gin in which you were interested in the fall of 1915?
A. Planters Gin Company.
Q. Would you state please the names of the gins operated in Ruleville at that time?
A. In addition to the Planters Gin Co. there was the Ruleville Gin Co., The Crescent Oil Company's gin and the Quiver Gin Company.

Q. The Crescent Gin Co. is the gin owned by the Crescent Cotton Oil Co.

A. Yes sir.

Q. Where is its business?

A. Memphis.

Q. What is its business?

A. Cotton oil pressing company and oil mill.

Q. Did you go to Memphis with Mr. Eastland and some other gentlemen in the fall of 1914 and have an interview with Mr. Austin Boyd, manager of the Crescent Cotton Oil Co.?

A. Yes sir.

Q. What was the purpose of that visit?

A. Purpose was to buy from the Crescent Cotton Oil Co. their gin plant at Ruleville.

53 Q. Why did you want to buy the gin and what were the conditions that brought about that purpose in your mind?

A. Well, to give the clear purpose—my purpose and I think the entire purpose was the unfair methods that the Crescent Cotton Oil Co. had resorted to in controlling the price of seed at that point.

Q. Tell the court in your own way the conditions that were there at Ruleville?

A. To give the exact conditions I would probably have to go back to the beginning of the period that the Crescent Cotton Oil Co. began business at Ruleville.

Q. Go ahead?

A. The first year they began business there they demanded of the other two gins, Edmundson and the Planters Gin Co. certain portion of the seed coming through that gin. In other words they wanted the seed from one or the other of the gins equivalent to that. They threatened to fight on the gin by reducing the price of ginning below the cost of ginning and raising the price of seed at the prices we were getting seed where it would be an absolute loss to the ginning companies to operate. I first, being the manager and president of the Planters Gin Co. declined to enter into an agreement of that kind, but after a considerable time they put on a fight along that line and we were running at a loss Mr. Edmundson being affected different from what the stockholders of the Planters Gin Co. was, having a greater loss than we were. In other words, Mr. Edmundson rented all of his land he owned a large part of the gin outlay and he got no revenue from the advanced price of the seed; the only revenue he got was from the ginning which come through his gin. On the other hand the principal stockholders,—practically all the stockholders of the Planters Gin Co. worked their places on shares, while they were given prices on seed they got the benefit and could stand the advance in seed. Anyway, running on two

54 or three weeks I thought the matter over and finally when I decided I would accept the proposition that Mr. Edmundson was so solicitous about, the loss that he was standing, that I called him over the phone and told him I made up my mind to accept the proposition if he would leave it to me to handle so as to protect their

own interest and enter into a combination in any way but force. He said he would leave it to me to handle any way I saw proper.

Objection by Counsel for the defendant to any agreements between Mr. Edmundson and Mr. Marshall, or to any conversation between Mr. Edmundson and Mr. Marshall outside of the presence of the parties defendant.

Decision reserved by the Court.

A. (continued). At this time we were welling our own seed to the planters largely at Greenwood, Mr. Barry and he had said to us he was protecting up on the price of seed as far as he could at that time.

Q. About what year was that?

A. That was the first year of operation. 1909 and 1910. So I called up Mr. Barry and he sent Mr. Steele over there to arrange an adjustment with the Crescent Cotton Oil Co. They were getting our seed along with—Berry told me he would call up Mr. Boyd——

Court: Don't tell what somebody else told you.

A. I want to make matters clear, want to give an intelligent presentation of the facts in the case.

Court: All right, don't tell what somebody else told you.

A. Anyway a representative of Mr. Berry, Mr. Steele and a representative of the Crescent Cotton Oil Co., Mr. Lambden met at Ruleville in conversation with Mr. Edmundson and myself. They said to us, these representatives, Mr. Lambden was spokesman for the Crescent making arrangements, that they would pay, put the price of ginning back to where it had been originally, which had been forty cents a hundred up to that time and would put the price of seed to within two dollars of the market quotations for the balance of the season if one of the gins would give them their seed for the balance of the season. Mr. Edmundson—I told them I had already discussed the matter with Mr. Edmundson and if he desired to do so he could. He agreed to give them the seed from his gin the balance of the season as soon as this agreement was entered into. They immediately changed the price from what they were ginning at to not forty cents a hundred, but to fifty cents and maintained $2.00 less than the market price was for the season.

Now then to confirm my recollection on that line and to show my good intentions in the matter I plead ignorant so far as the proposition—they were to show that this proposition was coming from the two gin companies and to the Crescent Cotton Oil Company. The two gin companies wanted me to write them a letter requesting that this be done. I told them I didn't know what kind of a letter they wanted me to write and to have Mr. Boyd write the letter they wanted to have and send to me and return it to them. Mr. Boyd sent the letter to me and we made a copy of that letter on a letter head of the balance, one for ourselves, one for Edmundson, which we signed and sent to them. I have the original in my pocket which Boyd sent to me at the time.

Q. To refresh your recollection with that memorandum, state what you then wrote to the Crescent Cotton Oil Company?

A. I just sent the copy to them at that time.

Q. Do you have it there?

A. Yes sir, here's the letter to the Planters Gin Co.

Letter marked "Exhibit B" which is in words as follows:

EXHIBIT "B."

56 Memphis Mill, 150 Tons Daily Capacity.

Mrs. L. R. Boyd, Pres.; Alston Boyd, Mgr.

Crescent Cotton Oil Company,

Room 6,

Cotton Exchange Building.

Memphis, Tenn., 10/29/10.

Planters Gin Company,
Ruleville, Miss.

GENTLEMEN:

Replying to yours of the 26th beg to advise that we have instructed our manager at Ruleville, to carry out the request which you made of us and trust he will do so to your satisfaction.

Yours truly,

CRESCENT COTTON OIL CO.

A. B./L. W.

Objection by Mr. Shands, Counsel for Defendant, stating: To shorten the record is the real cause of the objection. The legal cause is this is a matter that happened long before the passage of the statute they are undertaking to enforce in this procedure.

Ruling reserved.

A. This letter marked Exhibit "C" is the letter that Mr. Boyd sent us to copy of rather which we did copy and return to him presuming that we wrote this letter and this is an answer.

Q. I understand you signed this letter and sent it to the Crescent Oil Company at Memphis?

A. Yes sir.

Q. Go ahead and get down to the season of 1915?

A. The following season after running some little bit Mr. Edmundson came to me saying Boyd had requested that we give him a certain per cent of seed again, or wanted to know how it was he wasn't getting seed.

Q. Were you having trouble, or not?

A. Everything was smooth, running smooth from the time the letter was signed until the next season, until some time after we began ginning.

Q. When did you next have trouble again?
A. Next season, 1911.

Plaintiff here introduces letter just referred to and asked steno. to mark same "Exhibit C," which is in words and figures as follows:

EXHIBIT "C."

Ruleville, Miss., 10/26/1910.

Crescent Cotton Oil Co.,
Memphis, Tenn.

GENTLEMEN:

We write you in reference to the price at which you are ginning cotton at Ruleville; we are very anxious to get this ginning price put back to the old figure, i. e., 50 cts. per hundred and $1.00 per bale for wrapping; we are also especially anxious to have the seed price put back down to the point where it will always be $2.00 per ton under the FOB carload price, and we especially urge you to oblige us by carrying out the above, i. e., putting ginning back to the old figure and maintaining the $2.00 difference in the price paid at gins. If you will oblige us by making this price and restoring the old basis we guaranteed to follow these methods and prices ourselves during the entire remainder of the season.

Yours truly,

——— ———.

A. B./L. W.

Q. Go ahead.

A. Mr. Boyd called me over the phone and Mr. Edmundson notified me Mr. Boyd wanted me over the phone. I declined to go. He told me what he wanted, what he demanded so much seed. I told him I wasn't going into an agreement any further. They were selling seed below what we could get them for and it wasn't fair to go into an agreement of that kind, I simply wasn't going to do it. Mr. Boyd called for me two days and finally sent me a telegram wanting to know about five cars of seed he was demanding at the time. I want to the telephone and he demanded of us five cars of seed at $18.00 per ton and at that time we were paying $15.00 for seed. He would give us $5.00 above the price we were paying. But I had already been offered $20.00 for the seed. I told Mr. Boyd we wouldn't sell seed at $18.00 because seed was advancing and we can not sell you five cars because—he said he wouldn't give us $20.00, would give $18.00, that was all it was worth—he would give $18.00. I told him I wouldn't sell at the price. If he would give me $20.00 I would sell him a car, but wouldn't sell him five cars. He said if I wouldn't give him five cars he would have to cut the price *on* fifty cents for baling and $1.50 for ginning including bagging and ties. I told him we wouldn't enter into any further agreement with him and he immediately put on the fight again and it lasted for I don't know how long, some two or three weeks, until he got tired and quit. We were both cutting

prices for seed. After he found he couldn't whip us he put the price back again to fifty cents a hundred and maintained it on that line until the Quiver gin was organized.

Q. When was that?

A. 1914, I think it was.

Q. State the conditions that season?

A. After the organization, I think 1915 they started the same method again to obtain seed there, and when we declined to give them seed he put on a price of that kind again. Cut the price to $1.50 for ginning and maintained it for sometime.

Q. That was $1.50 per bale*n*, including bagging and ties?

A. That was fifty cents for ginning a bale of cotton.

Q. That the cost of ginning or baling?

A. Baling alone would cost us 50 cts. a bale, without the wear and tear.

59 Q. Do you recollect the ruling cost of ginning during the season of 1915?

A. It varied at different time I think.

Q. What is your recollection at that time?

A. $1.90 to 95 cts. My recollection is Mr. Livingston figured it at $1.93.

Q. Actual cost?

A. Yes, sir.

Q. Did that include bagging and ties?

A. No sir.

Q. How much——

A. One dollar, about a dollar. It varied on that.

Q. Then the average cost for ginning and wrapping would have been $2.90?

A. Yes sir.

Q. Whereas in fact the Crescent Cotton Oil Co. was forced to fight at a cost of $1.50 for ginning and wrapping?

A. Yes sir.

Q. Were your gins operated at a loss at Ruleville the season of 1915 when the fight was on?

A. Yes sir.

Q. Then what did you decide to do?

A. Well, we decided if possible to buy this gin plant from Mr. Boyd or from the Crescent Cotton Oil Co.

Q. Was it your purpose to destroy competition at Ruleville?

A. No sir, to prevent unfair competition as I just related.

Q. What steps did you take?

A. This fight on the part of the Crescent had caused considerable discussion in that entire section around there and was disturbing the nearby towns along that line and talking with several of them said the best thing to do was to buy them out.

Q. What was the Crescent Cotton Oil Co.'s attitude in reference to buying seed at the time of this low price in the cost of ginning at Ruleville?

60 A. They were putting the price of seed up to where we couldn't sell them at a profit at all. They were paying full market prices or more than the market prices.

Q. How about the price at Ruleville as compared with the price the Crescent was paying for seed elsewhere if you know?

A. I don't know of my own personal knowledge, except from what I was told by one of their men working for them.

Objection by counsel for defendant, saying: It must be part of the res gestæ.

Q. Who was the man?

A. Mr. Jamerson, he's now dead. He was working for the Crescent. He was one of their managers,—manager of one of their gins in Arkansas.

Objection by counsel for defendant.

Court: I think it is competent. Objection overruled.

Exception by Counsel for Defendant.

Q. What did he say?

A. There was a difference of possibly $5.00, I am not positive about that, considerable difference anyhow.

Q. What about the price at Ruleville this *tear* as compared to the seed in surrounding towns?

A. That affected the price and they were forced to meet the price in certain towns, or lose the ginning, which they did.

Q. Could you get as much for the seed?

A. We did most of the time—got practically what we sold them for from some of the smaller mills. On one occasion we lost two dollars a ton on the seed.

Q. You went to Memphis with these other people to buy? Didn't you?

A. After discussing *it* with quite a number of gentlemen there the proposition was we make up the money and go to Memphis and buy the gin. That was the next season, I think 1915. Mr.
61 Eastland was at Ruleville and we were discussing the matter with Mr. Eastland and Mr. McLain, who owned property at Doddsville, and they said they would go in with us, put up part of the money and buy this gin plant, and with that we arranged with several gentlemen to secure an interest in the gin, and some in the Planters—to buy out this plant. We felt we could pay a reasonable price for it. We went to Memphis, Mr. Edmundson and Mr. McLain and Capt. Perry and myself and Mr. Eastland. Mr. Eastland did the talking. He told Mr. Boyd he had come there to buy his gin plant at Ruleville, and Mr. Boyd said it wasn't for sale. Mr. Eastland told him we would like to buy it, would give him full value, all it was worth or more than it was worth if he would sell. Mr. Boyd said he did not care to sell; he wouldn't sell. If he sold the gin it would necessitate putting up another; that he wanted the gin as a feeder to his oil mill and for that reason didn't want to sell. After some conversation on that line he declined any proposition we might make, we come back home.

Q. Were you in position to make good any offer if he would have accepted it?

A. Yes sir.

Q. Were any other offers made to buy the gin?

A. When the Quiver was in formation, Mr. Franklin and Mr. Hannah and others, and I was one of the others, made a proposition, told them if I could buy the gin plant I would take stock in it for the reason I have just stated. Would put up the money myself to buy the gin plant. I took the matter up with Mr. Boyd and one time thought we was going to purchase it—and we couldn't get an answer to our letter. I saw the correspondence from Mr. Franklin to Mr. Boyd, but he couldn't purchase it.

Q. Has the Crescent Cotton Oil Co. been operating its gin at Ruleville continuously since 1915, 1916, 1917 and 1918?

A. Yes sir.

62 Cross-examination.

By Mr. Shands:

Q. Prior to the coming in of the Crescent Cotton Oil Co. the two gins that were in the town were the gins managed by you and the gin managed by Capt. Perry or Mr. Edmundson?

A. Edmundson.

Q. Those were the only two gins in the town at that time?

A. Yes, sir, there had been three at one time, Ruleville gin.

Q. There were only two at the time the Crescent Cotton Oil Co. came in?

A. Yes, sir.

Q. You were at that time a member of the board of aldermen of the town of Ruleville, were you?

A. When the Crescent came in, yes, sir.

Q. You were at that time a member of the Board of Aldermen of the town of Ruleville?

A. Yes sir.

Q. And operated one of the two gins in the town?

A. Yes, sir.

Q. You and Mr. Edmundson then had no difficulty in agreeing with each other about the price of ginning prior to that time, did you?

A. No, sir, none.

Q. No serious differences between Mr. Edmundson and the Planters Gin Co. You and he agreed on the price of ginning in the town did you, each year?

A. Well, in this way, we tried to keep within two dollars of what we could get for seed.

Q. I am asking you about the price for ginning?

A. The price of ginning had been established before the Planters Gin Co. was ever in operation—at forty cents a hundred, and we continued to gin at that price.

Q. There was no difference in price between the gins operating there prior to the time the Crescent Cotton Oil came in,

63 was there?

A. There was no difference in the price of ginning, no sir.

Q. And as to the seed, you and Mr. Edmundson also paid the same for seed, did you not?

A. Yes, sir.

Q. Before you would advance the price you would communicate with him when you thought it ought to be advanced?

A. Sometimes we did, usually did.

Q. That was the understanding?

A. No understanding between us, we usually did.

Q. That was the practice between you?

A. As it has been now, along that line.

Q. You and he never had any misunderstanding at all about what you ought to pay for cotton seed?

A. Well, we did at one time have considerable misunderstanding——

Q. When was that?

A. It was a year before the Crescent Cotton Oil Co. came there.

Q. How did you reconcile that difference—by talking it over and agreeing?

A. It would be necessary for me to go into a lengthy explanation.

Q. Not as to that question, did you talk it over and agree on it?

A. No, we didn't agree for a time. I went ahead and acted independently of what I thought his judgment——

Q. You did finally agree so as to have a uniform price?

A. With following our lead. He wanted to go one way and I went another and he followed our policy?

Q. He compromised on agreeing with you?

A. We didn't compromise. We acted as we thought all right and he followed our custom.

64 Q. For what length of time did the difference between you and him occur?

A. His judgment on it and my action in the matter. He was willing to compromise—at that time he wanted to compromise on a basis at a certain price if we could sell for two or three dollars more than we could sell at that mill. Edmundson thought it best to give them the seed and I thought different as to it and did do it.

Q. There was no fight between you and Edmundson as to the price of seed?

A. Not especially between us. There had been when Mr. Rule was operating the gin.

Q. But he had to cut it?

A. No, he shut down the gin and afterwards was a stockholder of the Ruleville Gin Co. for a short time.

Q. After the Crescent came in and after the Quiver Gin Co. was built there never was any trouble between the balance of the gins agreeing on what the price of seed should be, was there?

A. No, sir. No serious differences along that line.

Q. Was it not your custom and practice to agree each day on what the price of seed should be?

A. Not each day, no sir.

Q. You would agree on the price of seed and the practice was

neither was to change that price without informing others, was it not?

A. Well, we usually went in and done like that—would know what the other was paying.

Q. Your deposition was taken before?

A. Yes sir.

Q. Didn't you testify that you and the manager of the other two gins except the Crescent always agreed on what the price of seed was?

A. I said we usually did. I wasn't always the one, had a share in the matter, but usually our gin did.

65 Q. You all talked it over and there was a perfect understanding between the balance of the gins in the town, except with the Crescent Gin?

A. Well, at times it was with the Crescent, except when they wanted to force us into as I said, giving them the seed. They forced us to give them the seed and put the price on and got out of line. Just as much agreement, we bought all along, notified Shelton and he notified us. He would get information as to seed and notified us and there was no difference up to the time——

Q. There was no difference up to the time Mr. Boyd got in?

A. There was no difference any time along that line except they had started out with this fight to control or get a certain amount of seed out of the town. That's the only time there had ever been——

Q. If Mr. Shelton, the manager of the Crescent Cotton Oil Co. gin would have paid the price you all wanted to pay for seed there would have been no trouble between you and them would there?

A. If they had gone on legitimately and paid within two dollars of the price we could sell seed for, but it was this that caused all the trouble on the occasion I speak of. Boyd called me up over the phone, I want to make this statement to make it clear. That when he called me over the phone or wired me to go to the phone he demanded of two gins five cars of seed at $18.00 and we were then paying $15.00 and I was offering them at $20.00 for the seed and so told him over the phone. He declined, but said he would take them at $18.00. We didn't have five cars of seed. We would have to gin—at that price we would have to gin at $18.00, although without disturbing him we continued at $15.00—bought seed at $15.00. When he said this if we didn't give him five cars of seed, he would immediately take such steps to get the seed, we knew he would mean to cut the price of ginning to $1.50. He also advanced the price of seed. He had paid $18.00 but we could sell them for $20.00

66 and we immediately put our price up to $20.00. In other words he was trying to control the price of seed. He meant to hold the seed down to accept his proposition.

Q. That all your explanation?

A. Yes, sir, principal part of it.

Q. That was what started the trouble?

A. Yes, sir, his endeavoring, you might say, to force us to agreement he said to hold the price down.

Q. Is that what started this trouble between you and the Crescent Cotton Oil Company?

A. Yes sir.

Q. He didn't accede before that time?

A. First year we started in that method and Boyd declined and did go on the balance of the season. At the end of that season now we got under the market quotation prices. We got $1.00 and $2.00—the price he paid Edmundson for his seed.

Q. When he put on the fight the first year he run it started this trouble?

A. As I explained when he gave Edmundson his gin and we gave ours to the Planters.

Q. That's what started the fight on the gin?

A. That's what started the fight on us. That's what started our fight on them.

Q. That's the cause of your fight on the Crescent, as I understand it, your version of it?

A. It was our fight to keep from being forced into an unfair deal as I figured it.

Q. The truth is before the foundations were laid for the building of a gin you started your fight with the Crescent didn't you?

A. Well, in what way?

Q. To do everything there either in your power as an individual or within your power—the power of any officer of the state 67 that you could control or by taking advantage of any official position that you might delay and prevent them from being in any competition with you in controlling the gin and cotton seed business in the Town of Ruleville?

A. Yes sir, I did, and want to explain why. I don't want to be in a false light here or anywhere else. I did for the very reason that I knew the unfair methods the oil mills had tried to force gins into, that they control through a gin or by these methods the price of seed. We had a difference with the Buckeye people along the same line, and William Neely controlled the price of seed through a gin or an agent, where they made a fight on a gin. Then before——

Q. Then before the Crescent ever had a gin stand in the town of Ruleville, you, taking advantage of your position as an alderman for the town of Ruleville, in the Chancery Court presided over by his Honor, Judge E. N. Thomas, sued out a writ of injunction to prevent them from building a gin in the town of Ruleville?

A. At the place where they were intending to gin, yes, sir.

Q. That injunction suit was tried out and the injunction dissolved and they were permitted to build their gin?

A. Yes sir.

Q. You left undone at that time, nothing that you could think of that you could lawfully do to prevent them from building a gin there in opposition to you, did you?

A. Well, I wouldn't say yes to that—in competition. I say in location where they were, and I want to explain this again—that the reputation the oil mill had, its unfairness at the time, we felt we would get just what we got.

Q. You mean unfairness in operating gins?

A. Unfairness in forcing prices on the seed.

Q. In what other places that you know of had the Crescent operated a gin prior to the one operated at Ruleville?

A. I don't mean better than that gin—oil plant had a better gin.

Q. Did, to your knowledge, the Crescent——

A. To my knowledge they didn't, but I was told they had

68 an oil mill and a gin at Senatobia, or somewhere over there.

Q. At Como?

A. Como, or somewhere over there.

Q. Who told you that?

A. I think Langdon, their representative, talked about their gin.

Q. He told you they were unfair in their competition?

A. No sir, he told me about their having a gin there, but I am not positive about that.

Q. Who told you of their unfair methods where they operated gins?

A. I didn't say gins, I said in oil mill business in controlling prices on that line they were like the Buckeye, or others.

Q. The fact is, the Crescent didn't own a gin in Mississippi before they put up the one in Ruleville?

A. I don't know about that.

Q. At least, if they did, you don't know where it was?

A. No sir.

Q. You speak about the place they were trying to put, it—that was because it was in the fire limits of the town?

A. Right in the residence part of the town where it oughtn't to be any gins in that part of town.

Q. Was it near residence property owned by you?

A. Not right near.

Q. Nearer to your residence property than your gin?

A. Yes sir.

Q. How much nearer?

A. About half the distance.

Q. That fire ordinance was prepared by you and was passed by the Board after you learned they were figuring on building the gin?

A. It wasn't prepared by me, it was prepared——

Q. At your suggestion?

A. No, not mine alone, several others.

69 Q. You personally attended to getting the attorney to draw it?

A. Yes sir.

Q. You, in your own proper person, saw the attorney?

A. I don't remember about it, probably might have had something to do with it. Not positive about that.

Q. After you knew of the purpose of the Crescent Cotton Oil Company to build a gin there is the reason you got the fire ordinance passed?

A. Yes sir, I used every honorable means I could to prevent them from putting the gin there.

Q. That's one of the things you call honorable means?

A. Yes sir.

Q. After you had the ordinance there, you were instrumental in having them enjoined from building?
A. Yes sir.
Q. You were personally acquainted with Mr. Boyd?
A. Yes sir, wasn't at the time, though I met him along about that time.
Q. During the time of the litigation?
A. Yes sir.
Q. You took part in the employment of an attorney in starting the injunction suit?
A. Our company did.
Q. You personally put up the money?
A. No sir, our company did.
Q. Your gin company?
A. Yes sir.
Q. The litigation was conducted in the name of the town?
A. Yes sir.
Q. Your gin company paying the expenses?
A. We did pay it.
Q. That was for the purpose of keeping them from putting up a gin in the town, prior to the passage——
A. At the point where it was—I will say frankly that if they had put the gin outside of the territory, we wouldn't have resorted to that line.
Q. You wouldn't have had any fire ordinance?
A. Yes sir.
Q. Mr. Boyd knew of your activity along that line?
A. Yes sir.
Q. When he did get his gin up, the question of the assessment by the Board of Aldermen of his property came up, didn't it?
A. The assessment of all property within the town.
Q. How does his gin compare in size with your gin?
A. He had a four gin outfit and we had just double the amount—we had an eight gin outfit.
Q. Your gin was twice the size of his?
A. Yes sir.
Q. This Board, of which you were a member, assessed your property for taxation how much?
A. I couldn't say about that.
Q. $8,000 was it?
A. I wouldn't remember without seeing the figures.
Q. Then for his gin, about half as big, your Board assessed him for $10,000, didn't they?
A. I will say along that line that might be true, but I don't know.
Q. Just answer the question?
A. I say it is possibly true, I don't think—I know I wasn't when it was passed on, as far as the gin was concerned.
Q. You were the most active man on that Board from the time they first talked of coming to Ruleville to this date?
A. Yes, sir, but I don't resort to that sort of methods to crush an enemy.

Q. Mr. Boyd had knowledge of all these matters when you went with Mr. Eastland to see him in Memphis. He knew of the fight made on him?

A. I presume he did.

Q. You knew him and he knew you?

71 A. Yes sir.

Q. When you went in to talk to him about buying this gin, did you tell him you had buried the hatchet and were on good terms with him?

A. I don't know as I had a word to say—Mr. Eastland did all the talking.

Q. You were present?

A. Yes sir.

Q. There was no explanation made to him by any one as to why you gentlemen wanted to buy his gin, or wanted to find out what he valued it at, was there?

A. I don't know of any particular explanation further than that Mr. Eastland said he wanted to buy the gin and was ready to pay for it.

Q. How much were you ready to pay him for it?

A. Well, we could have paid him a good deal more than we thought the plant was worth.

Q. What did you think it was worth, or had you made up your mind?

A. Don't know as we definitely made up our mind—discussed it at home—we would pay anything within the bounds of reason for it.

Q. But you hadn't even determined amongst yourselves what was the amount?

A. Not exactly, because we didn't know what he would ask.

Q. You were familiar with the property?

A. Yes sir.

Q. You probably knew more about values in Ruleville than any other living man?

A. Don't know as I knew more than any other living man, but about as much.

Q. About as much?

A. In my capacity.

Q. You bought and sold as much as any other living man around there?

72 A. At Ruleville.

Q. At and about Ruleville.

A. No, I don't own quite as much as some, but I own considerable.

Q. And you keep in touch with values?

A. Yes sir.

Q. Is there any one in Ruleville better qualified than you were to know the value of that mill?

A. I don't propose to put myself in that attitude—I am not that presumptuous about my ability.

Q. No one there on the day you went to talk to Mr. Boyd about it?

A. I don't know about any one in a better position to know.

Q. What is your opinion as to the value of property on that day?
A. I told you what I made up my mind about it that day.
Q. Answer the question.
A. That's the only way I think it was. I think that day we didn't think it was worth that much, but we would have given something like $8,000.00 for it.
Q. Did you, or not, know it had been assessed as a result of judicial determination for taxes at $10,000.00?
A. No, sir, I did not.
Q. Had the other gentlemen made up their minds as to what they were willing to pay for it?
A. I don't know what they had.
Q. Were you willing to pay more than $8,000.00 for it on that day?
A. I don't know about that. Hadn't discussed the price at all. We would have paid a good deal more than we thought it was worth.
Q. Your idea is you would have given about $8,000.00.
A. Yes sir, at that time.
Q. That's more than you thought it was worth?
73 A. Yes sir, I see where you want to lead me to. The life of a gin is about seven years, and the life of that lease was about ten, thus making considerable difference in price.
Q. Look at that tax receipt and see what year that is?
A. Well, I wasn't on the Board and have no connection——
Q. These taxes paid in 1915 were for the year 1914?
A. Yes sir.
Q. Now, you didn't make any offer at all to Mr. Boyd in dollars and cents?
A. Personally, I didn't, no, sir.
Q. Now, Mr. Marshall, this man Thompson you say you had some conversation with about the price of cotton seed, when was that?
A. That was——
Q. Was it Thompson or Landrum you had the conversation with about cotton seed? The one you testified about this morning?
A. Mr. Thompson.
Q. What connection did you say he had with the Crescent Cotton Oil Company?
A. He worked there in Ruleville for them as gin man and left there and worked as manager for one of the gins in Arkansas.
Q. Where was he working at the time you had this conversation with him?
A. In Arkansas at that time.
Q. Where was he when you were talking to him?
A. I think we met him on the streets in Memphis.
Q. How do you know he was working for the company in Arkansas?
A. He told us he was. Left Ruleville to go there. He said he had been manager for them.
Q. All you know about his agency is what he told you?
A. Yes sir.

Motion by Mr. Shands that that answer be excluded.
Ruling reserved.

74 Q. Mr. Shelton is hired for wages to run the gin at Ruleville?

A. Yes sir.

Q. He is not a gin officer or stockholder?

A. No sir.

Q. Did he tell you—was he in the discharge of any business for the Crescent Cotton Oil Company at the time he told you about this?

A. I don't know about that—I don't remember. We were only there a short time. We were at the hotel or on the street, he and McLain were talking and I heard the conversation.

Q. Was that the same time you made the offer to Mr. Boyd to buy him out?

A. I am not positive, but I think about that time, I am not sure.

Q. Do you know anything as to the difference in grade in cotton seed?

A. Yes, sir, I know when they are good and when they are bad.

Q. And there is a whole lot of difference in prices between good and bad?

A. Yes sir.

Q. Difference in price of seed dependent upon the nature of the soil in which they are grown?

A. Yes, sir, dependent on the oil mill to have an analysis to determine it.

Q. The prices in different states vary?

A. I know prices vary from the hill and Delta section, and along that line.

Q. You know, as a matter of general knowledge, when the Government wants to fix the price of seed, they fix different prices in different sections?

A. Yes—hill and Delta section.

Q. And Arkansas and Mississippi seed?

75 A. No difference in the Delta of Arkansas, I think, and the Delta of Mississippi.

Q. Do you know?

A. I say, I don't think there is any difference.

Q. Have you any knowledge, one way or the other, or is that just an opinion of yourself?

A. What I have gotten from the papers.

Q. And you had been advised before going to Memphis, had you not, that if you all would offer to buy from Mr. Boyd, or from the Crescent Cotton Oil Company, and he didn't sell to you, that then they could be forced out of business in the State?

A. No, I didn't know on that line.

Q. You had been advised to that effect, and wasn't it the purpose of your trip to Memphis to make that offer?

A. We had no other purpose than to buy. I had read of and known of this law being passed by the Legislature.

Q. Just before going up there, were you not advised by the Attorney General, or some one else, that if you would go there and

offer to buy and if Mr. Boyd wouldn't sell, then you could force them out of business in the State?

A. Well, I hadn't by the Attorney General, but I had by a gentleman who had talked to the Attorney General.

Q. Did you not all go to Mr. Eastland, to make it a concrete case, with your plan, and didn't he advise you if you would get together money enough so as to take this up, if he made a proposition to sell, and didn't he caution you that you must have the money ready, and before you agreed on this, said you would have to go there and make an offer to buy, and didn't you leave the next day after that to go to Memphis to see Mr. Boyd?

A. I couldn't answer yes, or no, without saying this, Mr. Eastland was up there two or three weeks before this, and now while we were having a difference on this line, he asked us why we didn't buy the fellow out. We told him he wouldn't sell, and he told us about this law, and that we ought to go ahead and do this. If he didn't sell, matter could be reported to the Attorney General and get in behind it.

Q. It was for that purpose you made him an offer?

A. It was for the purpose of buying, if we could.

Q. Who entered into that agreement to buy?

A. Quite a number of gentlemen discussed it at the time, said they would be willing to take stock in a company forming, new company of farmers in the country to take the gin up.

Q. I am not talking about discussing it, but who had agreed to be amongst the purchasers?

A. No one else, I would have bought it up myself, every dollar of it.

Q. Had you agreed——

A. I told them I would—I would give that man Boyd a check for it, if necessary, to close the deal.

Q. Was it agreed between you and the gentlemen that you would do that?

A. We understood Edmondson and Wilson, and several of us, every man there could have paid Boyd a check for the money.

Q. Had any of you agreed to do that?

A. Yes, sir, we all agreed. I could have drawn a check in either one of those men, or on the bank, and had it honored.

Q. Your check was good, but did you agree to pay for it?

A. Yes sir.

Q. How much did you agree with them about the pay?

A. It was left to our judgment to go just as high as we could possibly go up.

Q. You never had any agreement as to how much you would pay?

A. We discussed it, some said four, five or six thousand, and I told them we couldn't buy it for anything like that and that I had in my mind about $8,000.00, and I had heard that Mr. Boyd had talked one time of selling it for $9,000.00.

Q. That was to Mr. Franklin?

A. I think it was Franklin. His purpose was something like that. If it wasn't Franklin it was Hunt or Franklin.

Q. They were partners?

A. There wasn't any corporation. In other words, the Quiver Gin Company were contemplating buying the gin outfit and operating it.

Q. What is the capacity of your gin in bales of cotton?

A. It's presumed to gin about seventy-five or eighty bales a day.

Q. On eight stands?

A. Yes, sir. We have seventy saw- on one side and eight on the other.

Q. You say about 80 bales, you think, is the capacity of your—

A. I mean in a day's run, without going into the night. We don't gin more than eighty or eighty-one in a day, I don't think.

Q. What does it cost you a day to operate that gin, taking the labor that you hire?

A. I never figured that closely—sometimes we had a double crew and sometimes a single crew. It depends on the amount of ginning.

Q. You are a practical gin man?

A. Yes sir.

Q. You pay the bills?

A. No sir.

Q. You don't know how much it costs?

A. I couldn't say without looking. Mr. Edmondson looked after the business, he could get up a statement.

Q. You would have a fireman and engineer?

A. Yes, sir. One man does both of that.

Q. You know what they got in 1915?

78 A. Three dollars a day.

Q. Is that what you were paying?

A. I think so—two and a half or three dollars.

Q. How many men did you have at the gin stands?

A. We had one for each batter, two gin men, sometimes two and sometimes one.

Q. How much does he cost you?

A. Tow dollars, or two and a half.

Q. In 1915?

A. Yes sir.

Q. Depended on the capacity of men?

A. Yes sir.

Q. In labor?

A. Yes sir.

Q. That would be five dollars for the two?

A. Yes, sir. Sometimes we had three dollars a day men and sometimes men wouldn't be worth over two dollars.

Q. $5.00 covered the two?

A. Yes sir.

Q. How many men on the press?

A. One man to each press.

Q. That made four men?

A. Yes sir.
Q. How much did you pay them?
A. Paid the press men about two dollars a day. Then the men that tied up cotton, dollar and a half. Two at a dollar and a half and two at two dollars, the four would be $7.00 a day.
Q. What other men did you have there?
A. Manager.
Q. What did you pay him?
A. One Hundred Dollars a month, or one hundred and twenty-five.
Q. For how many months?
A. Six months, and sometimes longer.
Q. $125.00 a month for six months at that time?
79 A. Yes, sir, I think at that time. Part of the time a hundred dollars and part of the time $125.00. We paid different prices that was around an average of one hundred dollars.
Q. One hundred dollars a month, that would be $3.33 a day for him? Who else did you have besides the manager?
A. We had a man weighed cotton a good deal of the time at $50.00 a month.
Q. Fifty dollars for him would be $1.66 a day?
A. Sometimes we had a man of that kind, and sometimes we did not.
Q. That foots up $20.65 a day. What did your fuel come to?
A. We had two other men handling the elevators?
Q. What did you pay them?
A. Dollar and a quarter to a dollar and a half.
Q. Say two and half for them, that would be $23.15. What other expenses did you have, fuel and oil, didn't you?
A. Yes sir.
Q. How much coal did you burn a day?
A. We used from eight to nine cars for the season.
Q. Do you know what the consumption of coal was per day?
A. No, sir, I don't know exactly.
Q. $20.00 a day cover your fuel?
A. I don't think it would take that much.
Q. Well, I am giving you a good, liberal outside. Was it about $17.50 a day?
A. I don't know on that line. Our pay roll for the labor would never in any two weeks be the same thing. It would be from $75.00 to $150.00 a week.
Q. Your labor of $75.00 or $150.00 a week depended on whether you were running overtime, or not?
A. Or whatever labor we kept. We didn't keep a regular crew just the busy season.
80 Q. At $17.50 a day for coal and at $125.00 per week for labor, would make $230.00 a week, or divided by six, it would be a little less than $40.00 a day that it cost you to operate the gin, outside of the bagging and ties, from $35.00 to $50.00 a day, dependent on whether running full time?

A. I never depended on that, I depended on Mr. Livingston getting up the figures.

Q. You figured on wrapping cotton costing you $1.00 per bale?

A. Yes, sir.

Q. How much profit did you have on bagging and ties on that?

A. We didn't figure any profit, because books show there was mighty little profit.

Q. If a man can furnish ties and bagging at eighty-two cents, and gins and wraps for $1.50, he has got sixty-eight cents left to pay his expense of ginning?

A. I wouldn't think that, no, sir.

Q. Subtract eighty-two from $1.50 and what have you left?

A. Bagging and ties, there is waste in it, negroes cut it and the ties bust. We can't come out in the neighborhood of one dollar.

Q. Suppose a man does it and exercises such care——

A. Possibly might be done, but it would beat anything I ever heard of.

Q. If your ginning capacity was eighty bales and you got sixty-eight cents for ginning, you are making money ain't you?

A. Well, if we would gin every day, and control everything along that line, it would be a good deal of difference. But one day we gin fifteen bales and the next day eighty-five and you got the same expense, no matter how much cotton you gin.

Q. You got the same expense regardless of what cotton you gin?

A. Not always that way—we had a double capacity.

Q. So if you reduce your price and increase your volume of ginning, you are making money?

81 A. If you would maintain that every day, it's a different proposition. Any gin that does that, or can do it.

Q. Have you any knowledge on the subject that the Crescent Cotton Oil Company has made money from the operation of its gin, not counting any transactions in seed at all every year it has operated in Ruleville?

A. Yes, sir, considerable money.

Q. From the operation of the gin alone, not considering the seed?

A. Yes sir.

Q. Have you not every year made money from the operation of the gin?

A. Yes, sir, made money.

Q. Made not less than twenty-five per cent on the investment on the operation of the gin every year since the Crescent went in there?

A. We made more the year we were in agreement with them than we made any other year.

Q. Have you in any year since you have been there, made less than twenty-five per cent on your investment?

A. Yes, sir, one year.

Q. Which year was that?

A. Couldn't say, our gin was in pretty bad repair, we had a good deal of expense.

Q. I am talking from the operation?

A. I understand, of course. We didn't gin the cotton.

Q. The gin was broken down and not running?
A. Yes, sir.
Q. When the gin was operating, have you ever made as little as twenty-five per cent on your investment?
A. I couldn't say, don't know positively. I don't think we made that much two or three years.
Q. That's a pretty fair investment?
A. Yes, sir, twenty-five per cent.
Q. Did you ever know of a man who quit business because it wasn't a good business, if he made twenty-five per cent?
A. The life of a gin—you know you got to make twenty-five per cent on a gin. If you don't gin, you can't live. That's my idea and what my experience is. The life of a gin is about seven years. That's what the statistics show. And you got each year to pay out a good deal of money to keep the gins going, and to do the work. We have got a big expense.
Q. You have done that, and still taken down an average of twenty-five per cent each year since that gin has been there?
A. No, sir.
Q. What year have you failed?
A. We failed more than we made that.
Q. What has been your average profit since 1910?
A. I couldn't say that without going to the books.
Q. It hasn't been at any time looking like a failing business?
A. We tried to keep it from a failing business.
Q. Now, you have valued your gin at what?
A. Valued it now?
A. Yes sir.
Q. Well——

Objection by counsel for the State.

Q. Well, in 1915.
A. I couldn't say, we rebuilt our gin altogether. Tore it down and built it new and put in new outfit. I think about that time, 1913 or 1914, I am not positive what year we did rebuild our gin.
Q. In 1915 what did you consider it worth then, fair market value of it?
A. Our gin property all together we figured at about fifteen or sixteen thousand dollars—what it cost.
Q. In the year 1915, you made a net profit of a little over eighteen thousand dollars paid out to stock holders?
A. No sir.
Q. What did you make?
A. I don't remember.
Q. Will you please file a statement of what your profits have been?
A. I—will I file one?
A. Yes, sir.
A. I couldn't do so without going to my books.
Q. Where are they?
A. At Ruleville.

Counsel for the State: We object to the question as we do not see the pertinency of the request.

A. I want to answer that this way. We have at times made a good deal more than I thought we were entitled to because we — afraid to change the price because the Crescent Cotton Oil Company would make a fight on us.

Q. Will you file that statement—will you have it prepared from your books?

A. I can have Mr. Livingston do so, I am not familiar enough with it.

Q. I will ask you, on your return home, to make a statement and file it, from the time the Crescent Cotton Oil Company went in there until the time this suit was filed.

Objection by Counsel for the State, saying: "We are on the trial of the cause. There has been no request made for this information before and it is not necessary to delay the cause unnecessarily."

Q. When you stated this morning it cost you $1.93 a bale to gin cotton, outside of the bagging and ties, what went to make up that cost?

A. I say that's a figure that Mr. Livingston gave me on one occasion. Nearly every year we figured up what the cost was on that line. So many different things come up in expenses it is hard one season to figure against another.

84 Q. Do you know of any other gin the Crescent Cotton Oil Company owns in Mississippi?

A. That they own now?

A. Or have ever owned.

A. I understood they owned a gin at Duncan, at one time, Duncan, or some other place on the main line, and one at Love Station.

Q. After this suit was started a proposition was made by the Crescent Cotton Oil Company to you, through the Attorney General, to sell this gin out at its appraised valuation, was it not?

—. ——.

A. Which valuation was less than it was assessed by the Mayor and Board of Aldermen of Ruleville?

A. I don't know what its assessed valuation——

Q. They made you a proposition to sell it for under $10,000.00?

A. I think last year they requested what we would be willing to pay for it, and I made a reply we would be willing to name one party and let them name the other and we would take it on any price the arbitration would agree on.

Q. You never made any offer for it?

A. No sir.

Q. And declined to make an offer?

A. No, didn't decline. I made that proposition that we would be willing to do that.

Q. It was offered to you at a stated figure?

A. This last year.

Q. Yes.

A. I don't think it was offered to me. About $8,000.00 or $9,000.00. I don't remember the exact figures.

Q. You are not willing to pay that?

A. Not now. As I understood it, they had a ten year lease on the property, and their lease had expired. That had something to do with the value of the property.

85 Q. Are you willing now to make any offer on that gin, or do you know anybody else that will?

A. As I understand it, they have got a three year clause on their lease, option, or right, and if, on the advice that that lease is good three years or more, we will be willing, perfectly willing, to buy on the same terms as I said, that you name one and we would name one, and let them agree on a price, and we would take it, yes, sir.

Q. Refer it to arbitration?

A. Yes, sir.

Q. You are not willing to make any money offer in dollars and cents, and never have been?

A. Yes, sir, if he had made any kind of a proposition, we would have been willing to give anything within reason for it.

Q. You have been willing to buy, but never have done it up to now?

A. No, sir.

Q. Will you do it now?

A. Dollars and cents?

Q. Yes, sir.

A. I don't care anything for it personally. I don't want the gin property.

Q. What will you pay for it?

A. Except for one reason I have given.

Q. You want to get shut of it?

A. If he will run the gin legitimately or fair, when he tries to force me or my company to give them seed.

Q. I am now authorized to request of you, by Mr. Boyd, an offer of what you will give for that gin?

A. I will say that I am not in the market for the gin, but I would, at a reasonable price to our company, buy it, or the corporation will buy it.

Q. You are not now prepared to make any offer for it?

A. I don't want to buy it at present. Don't want to operate
86 the gin. But I would buy it, however, at a reasonable figure.

Redirect examination.

By Mr. Robinson:

Q. Mr. Marshall, Mr. Shands asked you if Mr. Boyd didn't make you an offer to sell you the gin at Ruleville through the Attorney General. Isn't it a fact that offer was made to sell you the gin at Ruleville and Love, Mississippi?

Objection by Counsel for Defendant.

Objection overruled.
Exception.

Q. Have you ever seen that letter?
A. I don't remember ever seeing it.
Q. May I refresh your recollection and ask you, if, when w- were at Indianola to try this case, I showed you that letter and asked you to submit a proposition to it?
A. Yes, sir, I saw that letter.
Q. In May, 1918?
A. Yes sir.

Letter submitted, dated May 7th, 1918 and stenographer asked to mark it "Exhibit "D", also reply, marked "Exhibit E". Stenographer — same which are in words and figures as follows, to-wit:

EXHIBIT "D."

The United States Food Administration License No. 6—07061.

Memphis Mill, 150 Tons Daily Capacity.

Mrs. L. R. Boyd, President.

Alston Boyd, Sec't'y and Treas.

Crescent Cotton Oil Co.,

119 Madison Ave.,

Second Floor.

H. J. Schoettelkotte, Manager.

Memphis, Tenn., May 7th, 1918.

Hon. Ross A. Collins, Att'y Gen.,
Jackson, Miss.

DEAR SIR:

87 Referring to the suit of the State of Mississippi against ourselves, in which suit you as attorney general for the State have sued us on account of owning cotton gins at Ruleville and at Love, Mississippi, said suit being brought under your State Statute of 1914, known as the Anti Gin Law, and which case went to your Supreme Court on Demurrer, and in which case your State Supreme Court upheld the State on this Anti Gin law, we beg to say that our gin properties at Love, Mississippi, and at Ruleville, Mississippi, have been appraised by an expert who reports under oath to us that these properties exclusive of the real estate and railroad side tracks are worth $16,666.49.

We will be glad to submit you the sworn appraisal of the properties for your inspection if you desire. The real estate and the railroad side tracks which we paid for and which serve these gin plants, are worth conservatively $1,500.00 and if the said $1,500.00 is added to the sworn appraisal value of $16,666.49 above mentioned it will result in showing that the actual present cash value of our gin properties at Love, Mississippi, and at Ruleville, Mississippi (our Ruleville plant stands on leased ground, but we paid for the side track) is $18,166.49 including lease-hold side-tracks and real estate.

In order to relieve the State and ourselves of any further litigation in this matter, we now hereby offer to immediately deed these properties and all our interest in same to any one you may name either individual or corporation for and in consideration of the sum of $18,166.49, which — the actual cash value of said properties as shown by the sworn appraisal which we will submit for your examination along with bills showing the actual cost of side tracks and value of the real estate on which the gin plants are located, both that which we own under lease and that which we own in fee.

88 We believe that in view of our bona fide offer set out to deed these properties to any one you name for their present cash value, that you will agree with us that we have made an earnest and sincere and proper effort to comply with all your legal requirements in your state. We have gone just as far as we can go without actually being deprived of our properties without just compensation.

We very much trust that you will suggest some one to whom these properties can be deeded for $18,166.49 in cash, thus entirely terminating this whole matter.

Please advise either our attorney, Mr. A. W. Shands, at Cleveland Mississippi, or advise us here direct, your conclusion in this matter, and if you will arrange for any one to take the properties over at their actual cash value, namely: $18,166.49 for this amount cash, we stand ready at any time to make the proper conveyance of the properties.

We beg to remain,

Most respectfully yours,

CRESCENT COTTON OIL CO.,
By A. BOYD,
Sec. & Treas.

A. B./E. S.

EXHIBIT "E."

May 11, 1918.

Crescent Cotton Oil Co.,
Memphis, Tennessee.

GENTLEMEN:

I beg to acknowledge receipt of your favor of the 7th and I hardly think you are serious in suggesting that the Attorney General of the State should interest himself in securing a purchaser for your gin plants at a designated cash price. This office knows nothing of the

physical condition of the plant, nor is it advised as to possible purchasers. The record shows that you had an offer to sell this
89 plant at one time before the litigation was instituted and you refused even to name a price. It is a matter of common knowledge that gin properties deteriorate rapidly. However, I shall take pleasure in referring any one interested in the purchase of a gin to your property.

I suppose that the only feasible method for the disposition of these gins would probably be for the Court to order the sale after a reasonable advertisement.

This case will come on for final hearing at Indianola, on Wednesday, May 15th.

Very truly yours,

ROSS A. COLLINS,
Att'y Gen.,

By ——— ———,
Assistant Attorney General.

F. R./N.

Q. Now, when we came to Indianola, a reply to that letter was drafted was it not?

A. Yes, sir.

Q. Also the original of that letter, which I will ask the stenographer to mark Exhibit "F."

EXHIBIT "F."

Indianola, Miss., May 15th, 1918.

Crescent Cotton Oil Co.,
Memphis, Tenn.

DEAR SIRS:

I have submitted to Messrs. A. L. Marshall, Capt. R. W. Perry, and R. D. McLean, your offer of sale of your gin at Ruleville, Miss. and at Love, Mississippi. The parties would not be interested in the gin plant at Love for the reason that the gin is out of the territory of these parties.

I am authorized to offer you on behalf of the above parties, the following proposition:

Messrs. Marshall, McLean and Perry will buy the Plant at Ruleville, and the price to be determined by appraisers, three in number, one to be selected by the purchaser, one by you, and the
90 third appraiser to be selected by the two appraisers already selected as above set out. Whatever price shall be determined by three appraisers as a fair and reasonable price, will be paid in cash by the parties for whom this offer is made.

Yours very truly,

FRANK ROBERSON,
Ass't Att'y Gen.

Q. What did they say about that proposition after it was submitted?

A. I never did have any reply to that.

Q. Did the Crescent Cotton Oil Company ever demand any seed of you at Ruleville before they established the gin there?

A. Mr. Landrum, their representative came there and would buy seed, but he never demanded any seed. He bought seed there.

Q. Is it a fact, or not, that a ginning price obtains over the Delta for the ginning of custom cotton—a ginning price from year to year?

A. You mean what the gins pay?

Q. Is it a fact, or not, that all over this Delta country that during any one season the price of ginning will be practically the same all over the country?

A. Yes, sir.

Q. When were you on the Board of Aldermen at Ruleville?

A. I was on the Board, I think, about two years.

Q. What two years?

A. About 1908 or 1909, I am not positive about the dates.

Q. Were you on the Board in 1915?

A. No sir.

Q. Or 1914?

A. No sir.

Q. Now, I believe you stated that your ginning capacity or the greatest number you ever ginned, was eighty odd bales per day?

A. Yes sir.

91 Q. Does the gin ever have any breakdowns so that you have to stop?

A. Yes, sir, good many.

Q. Is it a hazardous sort of business, or not?

A. Very hazardous. Most hazardous business of all, ginning business.

Q. Is it frequent, or infrequent, even if you have the cotton, you don't make a capacity run per day, due to breakdowns, bad weather, or what not?

A. In the early fall we usually don't have a great deal of trouble, but in the latter part of the season we hardly run a day without some trouble or some fault.

Q. In figuring up the cost of ginning cotton for the year 1915, I believe you testified your book-keeper figured the average of ginning that year, exclusive of wrapping, at $1.93?

A. I think that's about the figures.

Q. Did that includ- anything for depreciation or anything for interest on the capital investment?

A. No sir, just the actual expenses.

Q. That was the mere actual physical cost of the gin?

A. Yes sir. In other words, our expense account ran something like $5,000.00 and we ginned about 2,600 bales of cotton, something like that.

Q. What's the capital investment of your gin company at Ruleville in 1915?

A. The capital was $25,000.00.

Q. The question was asked you by Mr. Shands if you hadn't made money every year at Ruleville. I am not very clear in my mind as to what reply you made to that question?

A. We have made some money every year, yes, sir.

Q. Was the amount of profit continuous and stable through the seasons, or did you make money and lose money at times?

A. Made money at times and lost money at times.

92 Q. Did you make money at the time the fight was made on the Crescent?

A. We run at a loss at that time.

Q. You have a certified copy of lease haven't you?

A. Yes sir.

Same marked Exhibit "G" by the stenographer, which is in words and figures as follows:

EXHIBIT "G."

M. M. Rule

to

Crescent Cotton Oil Company.

Lease.

This indenture made and entered into this the 10th day of May A. D. 1910, by and between M. M. Rule, of Sunflower County, Mississippi, hereinafter called the Lessor, which expression shall include her heirs and assigns, where the context so requires and admits of the one part, and the Crescent Cotton Oil Company, a corporation organized under the laws of the State of Tennessee, hereinafter called the lessee, which expression shall include its successors and assigns, where the context so requires or admits of the other part: witnesseth:

That the said Lessor doth hereby lease and demise unto the said Lessee for a term of Ten years commencing this day and to be ended and fully completed on the 10th day of May, A. D. 1920, the following described tract or parcel of land, lying and being in the said County of Sunflower, in the Town of Ruleville, the same being the east part of what is known as Residence Lot number 2, on the map made by A. B. Hagaman, Surveyor, which map has been recorded on the Record of Deeds in the office of the Clerk of the Chancery Court of the said Sunflower County in Book R-2, at page 16, That particular part of the said residence lot which is hereby leased and demised is described by metes and bounds as follows, to-wit:

Commencing at the South East corner of the Town Well
93 Lot and run thence with the East boundary of the Town Well Lot to the North East Corner of the Town Well Lot and run thence parallel with the East Boundary of the residence Lot to the North boundary of the residence Lot thence in an easterly direction with the North boundary of the residence Lot to the North East corner of the Residence lot thence in a southerly direction with the east boundary of the residence lot to the South east boundary of the

residence Lot thence with the South boundary of the residence Lot to the point of beginning.

The rent of the said demises premises for the term of ten years, is the sum of Twenty Four Hundred Dollars ($2,400.00), paid and to be paid by the said Lessee to the said Lessor as follows, to-wit:

Six Hundred Dollars ($600.00), in cash the receipt of which is hereby acknowledged and the remaining Eighteen Hundred Dollars ($1,800.00) in Nine (9) equal installments of Two Hundred Dollars ($200.00) each due and payable on the 10th day of May, in the years 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, and 1918 (?). In addition to the said Twenty Four Hundred Dollars ($2,400.00) paid and to be paid as aforesaid, the said Lessee shall as rents pay before deliquency all taxes, levee, County and Municipal on said demised premises, during the aforesaid term commencing with those of the year 1910, and ending with those of the year 1920.

And the said Lessee doth hereby bind itself and covenant with the Lessor as follows, to-wit:

First. That it will during the said term pay the said rent at the times and in the manner aforesaid, and that it will pay before deliquency the said taxes, commencing with those of the year 1910 and ending with those of the year 1920.

Second. That it will not injure any of the trees now growing upon the said demised premises; and that if said trees or any of them be injured by any fault or neglect on the part of the Lessee or any of its agents or servants it will promptly pay the Lessor all damages arising from such injury.

Third. That it will at the expiration of the said term deliver up to the Lessor the said demised premises in the same condition that said premises are now in, there being no improvements or betterments on said premises at present except the fence inclosing it on all sides, except the West side thereof; provided always that the said Lessee shall have the right at any time within Sixty days from the determination of said term of removing from said demised premises all buildings, machinery, betterments and improvements placed thereon by it during said term, whether the same or any of them be annexed or affixed to the freehold or not.

The said Lessor doth hereby covenant with the said Lessee as follows, to-wit:

First. That the said Lessee paying the rents and taxes hereby reserved may peaceably hold and enjoy the said premises during the said term without any interruption by the Lessor or any person lawfully claiming through her, but always protecting her against any demand for or on account of any nuisance or otherwise, because of the Lessee's or its assigns, use or management of the property.

Second. That if the Lessee, its successors or assigns, shall be desirous of taking a renewal of the said Lease for the further term of three years from the expiration of the said term hereby granted and of such desire shall prior to the expiration of the said last mentioned

term give to the said Lessor her heirs or assigns ninety days' previous notice in writing and shall have paid the rents and taxes hereby reserved she the Lessor her heirs and assigns, will upon the
95 request and at the expense of the Lessee forthwith execute and deliver to the Lessee its successors or assigns, a renewal lease of the said premises for the further term of three years at the annual rental of Two Hundred Dollars ($200.00) per year payable in advance at the beginning of each year under and subject to the same covenant provisions and agreements as are herein contained other than this present covenant.

Provided always, these presents are upon this condition: That if said rents or taxes or any part of the same shall at any time be in arrear and unpaid for Sixty days (60) after the same ought to have been paid or the said Lessee shall be adjudged bankrupt or insolvent then and in such case it shall be lawful for the Lessee or those having her estate in the premises to re-enter into or upon the said demised premises or any part thereof, in the name of the whole and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made without prejudice to any right of action or remedy which might otherwise be used in respect of any antecedent breach of any of the covenants in this lease contained, and also that the said Lessor her heirs, legatees, assigns or legal representatives or the assigns or representatives of either are hereby granted and declared to have a first lien upon any improvements put upon said property during the life of this lease to secure the payment of any sum for which the Lessee, its assigns, or representatives, may become liable for any default or breach. But nevertheless, the lessee its successors and assigns, shall have the right to substitute from — to time other improvements which shall thereupon — subject to such lien and the improvements removed shall thereby be released from said lien provided that after the first day of January, 1911, the improvements left on the demised premises shall not be reduced so as to make the value thereof
96 amount to less than all of the unpaid rents whether said rents be due or not.

In witness whereof, the said Lessor has hereunto subscribed her name and the said Lessee has caused its corporate seal to be hereunto affixed and its name to be subscribed by L. R. Boyd, its President thereunto duly authorized by the Board of Directors of the said Lessee all of which has been done on the date first above written.

Executed in duplicate.

[SEAL.] CRESCENT COTTON OIL CO.,
By R. L. BOYD, *Pres.*
MARY MAUDE RULE.

STATE OF COLORADO,
County of El Paso:

I, Charles G. Graham, Notary Public in and for said County in the State aforesaid, do hereby certify that Mrs. Mary Maude Rule who is especially known to me to be the person whose name is subscribed to the foregoing lease contract, appeared before me this day in person and acknowledged that she signed, sealed and delivered the

said lease contract as her act as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal of office, this the 13th day of May, A. D., 1910.

My Com. expires April 6th, 1914.

[SEAL.] CHARLES G. GRAHAM, *N. P.*

STATE OF TENNESSEE,
County of Shelby:

Personally appeared before me, W. T. Bond, a Notary Public within and for the State and County aforesaid, Mrs. L. R. Boyd President of the within named Crescent Cotton Oil Company, a corporation who acknowledged that for and on behalf of said corporation and in its name being thereunto authorized by the
97 Board of Directors of said corporation she signed and delivered the within instrument and affixed thereto the corporate seal of the said corporation on the day and year therein mentioned.

Given under my hand and Notarial Seal, this 23rd day of May, 1910.

[SEAL.] W. T. BOND, *N. P.*

My Com. expires 23 March, 1911.

STATE OF MISSISSIPPI,
County of Sunflower:

I certify that this instrument was filed for record in my office at 9 o'clock A. M., on the 8th day of June, 1910, and was duly recorded the 15th day of June, 1910.

Given under my hand and seal of office, this the 15th day of June, 1910.

[SEAL.] A. P. STUBBLEFIELD,
Clerk.

STATE OF MISSISSIPPI,
County of Sunflower:

I, John W. Johnson, Clerk of the Chancery Court within and for the County and State aforesaid hereby certify that the attached sheets contain a full, true, and correct copy of that certain instrument of writing, a lease contract between M. M. Rule and the Crescent Cotton Oil Co., as fully and completely as the same appears of record in this office, in Record Book No. B-3, at page 381 et seq.

Witness my hand and official seal of office, this the 7th day of March, A. D., 1919.

JOHN W. JOHNSON,
Chancery Clerk.
By L. T. CHANDLER,
D. C.

[SEAL.]

98 Recross-examination.

By Mr. Shands:

Q. You testified in direct examination that the Crescent Cotton Oil Company owned an oil mill in Memphis?

A. Yes sir.

Q. That's in the State of Tennessee.

A. Yes, sir.

Q. They owned no oil mill in Mississippi that you know abything about?

A. They did one year.

Q. What year was that?

A. That was the year Edmondson shipped—I think it was 1910.

Q. Where was the oil mill they owned?

A. Edmondson shipped some of his seed to them, he said. I think it was either Como, or somewhere.

Q. Since 1914 they have owned no oil mill that you ever heard of in Mississippi?

A. No sir, not that I know of.

Q. Their purpose of building the gin at Ruleville was to have an advantageous method of buying seed, was it not?

A. Well, to use Mr. Boyd's language, his own language, it was the feeder for his mill in Memphis.

Q. All of the cotton that they ginned they bought the seed?

A. Yes, sir.

Q. And that seed was all shipped from Ruleville to Memphis, was it not?

A. I presume so, I don't know.

Q. Shipped from the State of Mississippi into the State of Tennessee to feed the mill being operated in the State of Tennessee?

A. I think the first year they operated there they shipped some of the seed up into Mississippi somewhere.

99 Q. But I am talking about the season of 1914 and 1915?

A. I think so, I don't know, I am not positive about that.

Q. The man that owned the gin can buy cotton seed very more advantageously at a given point than if he didn't own a gin?

A. I don't think he can. It gives him a disadvantage if they want to force gins in on that line, gives them advantages, if they want to take that advantage. Oil mills advance them money.

Q. Because you are financially able to handle your seed?

A. We sometimes get money for them, but we use them. We would like to be where we can get the best prices, but if you do compete with a mill you can't do it.

Q. I am talking about the mill man, he can buy seed very much more advantageously if he owns a gin than if he didn't own a gin?

A. Yes, sir, if they adopt the methods there they can.

Q. If they adopt any other methods he could buy it more advantageously than he could anywhere else?

A. I don't know about that. A gin gives a mill an unfair liberty to control the price of seed.

Q. In other words, he can buy seed more advantageously if he owned the gin than if he didn't own the gin?
A. Yes, sir, they can say, if you don't give us the seed, we can put the fight on you, some of them do that and it means a lower price to the farmer.
Q. You, in having connection with the oil mill, can buy seed much more advantageously at Ruleville though, in operating a gin than you could if you weren't operating a gin? You don't own an oil mill?
A. No, sir.
Q. Can't you buy seed more advantageously owning the seed than you could if you do own the gin?
A. Yes, sir, *sir*.
Q. It is advantageous to own a gin, whether connected with the oil mill, or not?
A. Yes sir.
Q. Buy nearly all the seed now?
A. Yes, sir.
Q. That custom has grown up, to buy seed in the Mississippi Delta, unless you are owning the gin?
A. Well, you can buy—the gin is not equipped except to take seed, that is, except by the load, it takes considerable time and the gin would not operate without considerable more time than they do now.
Q. Pays the ginner more profit on the seed?
A. Naturally want a profit.

ROBERT D. MCLEAN, Witness for and on behalf of the State, being first duly sworn, on oath, testified as follows:

Direct examination.

By Mr. Robinson:

Q. What is your name?
A. Robert D. McLean.
Q. Where do you live?
A. Doddsville.
Q. Do you own a gin at Doddsville?
A. Yes sir.
Q. Did you own it in 1914 and 1915?
A. Yes, sir.
Q. Public gin, is it?
A. Yes sir.
Q. How far is Doddsville from Ruleville?
A. Five and a half or six miles.
Q. Did you go to Memphis in 1916 in company with Mr. Eastland, Captain Perry and Mr. Marshall?
A. Yes sir, I think it was 1914, wasn't it?
Q. You remember the time of the visit?
A. Yes sir.
Q. What did you go there for?

A. To buy that gin plant at Ruleville.

Q. What did you want to buy the gin plant at Ruleville for?

A. They had a seed fight on. We thought if we could buy them out, save a lot of trouble.

Q. What were they charging them for ginning in 1915 when you went to Memphis to buy them out?

A. Dollar and a half.

Q. Did that include Wrapping?

A. Yes sir.

Q. What was the average cost of wrapping, bagging and ties in 1915?

A. $1.50.

Q. What does bagging and ties cost?

A. I think $1.50. Was what the bagging and ties cost at that time, I am not sure.

Q. They got dollar and a half for the whole?

A. Wrapping and ginning.

Q. That would leave nothing for——

A. Ginning.

Q. What size stand did you have?

A. Four eighties.

Q. Tell the court the average cost of ginning, including wrapping, in 1915?

A. It cost me about $1.80 for ginning, and I think about $1.50 for wrapping.

Q. Which would make $3.30 average cost per bale?

A. Yes sir.

Q. Tell the court what happened when you went to Memphis?

A. The President of the Cotton Oil Company refused to sell. Wouldn't make us a proposition at all.

Q. What was said about that, and by whom?

A. Mr. Eastland did the talking. He represented us. He agreed to buy and pay a reasonable cash price for it and they said
102 they didn't want to sell and they wouldn't talk to us.

Q. Did you all make that offer in good faith?

A. Yes, sir.

Objection by Counsel for the Defendant.

Q. Was the offer made in good faith, or not?

Objection by Counsel for the Defendant.

A. We were prepared to pay cash.

Q. What was your mental attitude in reference to making a cash offer?

A. We went there ready to buy them out.

Q. It is alleged in their answer to this bill that you parties who went to Memphis to buy this gin plant at Ruleville did so for the purpose of forming a monopoly in the ginning business at Ruleville. Was that your purpose, or not?

A. We went there to buy the gin.

Q. What was your purpose in buying the gin?
A. To do away with this unfair competition.
Q. That existed where?
A. At Ruleville.
Q. How was the price of seed at Ruleville during the season of 1915 as compared to surrounding points?
A. Well, at Doddsville and other places the oil mills were paying as $22.00 and the Crescent raised it to $25.00.
Q. Could you get $25.00 for your seed?
A. No, sir, I offered them some at that. I telegraphed and got their representative to call up Memphis, but they wouldn't give it.
Q. Do you remember his name?
A. I believe he lives at Sunflower.
Q. What kind of motive power do you have for your gin at Doddsville?
A. Oil.
Q. Is it more expensive than coal?
A. I think it's a little cheaper—in fact, I know it is.

Q. Do you know whether or not the Crescent Cotton Oil 103 Company bought seed at other points except Ruleville?
A. Yes sir.

Q. Do you know how their prices compared at Ruleville to what they paid at other points?
A. They paid $22.00 at other points, and $25.00 at Ruleville, just particular times.

Cross-examination.

By Mr. Shands:

Q. How far are you from Boyle?
A. I guess eighteen miles through the country.
Q. Part of the territory in there is territory that may go either — Boyle or to your place?
A. No, sir, I live close to Doddsville.
Q. Part of the territory between Doddsville and Boyle——
A. Well, you could get gins about seven or eight miles, it goes to Boyle.
Q. You spoke of the fight the Crescent put in there, ginning down to $1.50 wrapping and for the ginning. Those gin fights are frequent in towns whether the gin owned all the oil mills or not.
A. That's the only one I know of there.
Q. Didn't you hear of the fight at Boyle where they ginned free, between the Tolar's and Crawford's mills?
A. I didn't know anything about that.
Q. It was understood between you gentlemen who went to Memphis that if you could get the Crescent out of the game you all would arrange a uniform price of ginning?
A. We would have charged the same we had been charging and paying within two dollars of what we got for the seed. But with Mr. Boyd in there——

Q. You could gin cheaper and pay for the seed?
A. We would and did do it.
Q. You couldn't do it satisfactorily?
A. I suppose not.
104 Q. He would gin cheaper than you did and pay for the seed?
A. He was ginning for nothing and charging for the bagging and ties?
Q. You mean to tell me as a ginner and property man that it costs you $1.50 a bale for wrapping?
A. I think that was the price at the time, it's $2.15 now.
Q. Wasn't it a dollar, you testified before in this case, didn't you?
A. I don't know, seems it has been so long. Seems to me it was $1.50, been four or five years ago. I haven't kept up with it much.
Q. Who did you buy your bagging and ties from?
A. I don't remember, Stewart-Gwynne, I think. Have been buying from them a long time.
Q. Stewart & Gwynne of Memphis?
A. Yes sir.
Q. Do you mean to testify now that you are testifying as of knowledge when you say that the wrapping at that time cost $1.50?
A. I think that was the price. I am not sure. It has been a long time ago.
Q. And it cost you now how much?
A. Bagging and ties figure this year $2.15.
Q. How many yards of bagging do you figure to a bale?
A. Seven, I think. I don't attend to the gin myself. Not as familiar with it now as four or five years ago. I ran it myself then.
Q. How many ties to the bale?
A. Six I believe. Five or Six.
Q. Do you know what you pay a roll for bagging?
A. Now?
Q. No, then?
A. No, sir.
Q. Do you *m*now now?
A. No, I don't. I know it figures $2.15 a bale for bagging
105 and ties.
Q. Do you know how much it costs for a bundle of ties?
A. No sir. I use sixty pound ties and the heaviest bagging. I believe it is Hindus, or something like that. We at that time used a lighter bagging at Ruleville than we do now. I was using heavier bagging and ties.
Q. When you went to Memphis none of you gentlemen made Mr. Boyd any proposition as to what you would give him for the gin?
A. We told him we would give him whatever it was worth.
Q. Did you offer any amount in dollars and cents?
A. No, we asked him to do so. He declined.
Q. Did you make him any offer?
A. No sir. He told us he didn't want to sell, and we told him if he would sell we would pay any fair price. Mr. Eastland did the talking.

Q. Mr. Eastland, a lawyer in Yazoo City, and Mr. Marshall do considerable business, and Captain Perry is also a man of considerable business ability, is he not?

A. Yes sir.

Q. Any others in the crowd?

A. No, sir, that's all.

Q. You all went up to Memphis for the purpose of buying the gin and as soon as Mr. Boyd told you he didn't care to sell, you all abandoned the enterprise and he didn't make him any offer at all?

A. He said he wouldn't sell.

Q. Did you ask him if he would consider an offer?

A. Mr. Eastland did. He said if he sold the gin he would have to put up another one somewhere else.

Q. He said he needed it to feed his oil mill?

A. Or something to that effect.

Q. You made no offer to him in dollars and cents?

A. No sir.

Q. You, or no one else that you know of, made him an
106 offer in dollars and cents?

A. Not that I know of.

Q. You know you have not?

A. No, sir.

Q. How much had you all agreed to pay him for the gin?

A. Whatever he asked. Anything in reason. We would have paid him more than it was worth, if he had sold.

Q. Did you agree on any amount?

A. I don't remember of anybody.

Q. Not that you remember of.

A. No, sir.

Q. Weren't you informed by Mr. Eastland before you could have the Attorney General institute this suit, you would have to offer to buy, and if Mr. Boyd refused—Wasn't that what you went there for?

A. No, we went to Memphis to buy it.

Q. Mr. Eastland advised you to that effect before you went there?

A. I don't remember, I don't know anything about any suit at all. We went there to buy the plant was my understanding.

Q. Did you confer with Mr. Eastland about it when you went there?

A. Talked about it on the way up.

Q. Didn't Mr. Eastland, before you all left, tell you how this had to be in order that you could institute this suit?

A. He said he was going to see the Attorney-General and see what could be done about it.

Q. And told you you would have to get him where he would refuse?

A. I don't know about that. He said he had to either get other testimony coming home and see what could be done.

Q. When Boyd refused to sell to you, you had all the things done that could be done to get the suit started?

A. He said we had done all we could do.

107 Captain R. W. PERRY, Witness for and on behalf of the State, being first duly sworn, on oath, testified as follows:

Direct examination.

By Mr. Robinson:

Q. This is Captain Perry?
A. Yes sir.
Q. Do you live at Ruleville?
A. Yes sir.
Q. Did you have any financial relationship with the cotton gins in Ruleville in 1915?
A. Yes, sir.
Q. Which one?
A. Quiver Gin Company.
Q. Do you remember the average cost of ginning at Ruleville by the Quiver Gin Company in 1915?
A. The net cost was about $1.80.
Q. Did that include wrapping?
A. Yes sir. $1.50 more, that was the natural expense.
Q. Did that include anything for the depreciation of the plant?
A. No, sir.
Q. What size gin was it?
A. Four stand oil gin.
Q. Is oil cheaper?
A. I think it's a little cheaper.
Q. Would $1.50, including the wrapping, be above or less than the cost?
A. Less than the cost.
Q. Did you go to Memphis with Mr. Eastland and the other gentlemen?
A. Yes, sir.
Q. State briefly what occurred in that conversation?
A. We went to the Crescent Cotton Oil Mill and Mr. Eastland done the talking and told them we wanted to buy at the plant at Ruleville and give a reasonable price for it. He told us he didn't want
108 to sell it. If they did, they would have to put up another one somewhere else to feed their oil mill.
Q. What was your purpose in going to Memphis?
A. They were fighting us so we couldn't do anything. Cutting us about $1.50, including the ginning and wrapping.

Cross-examination.

By Mr. Shands:

Q. How long have you been in the ginning business there?
A. I went in there when we started in 1913 or 1914.
Q. Mr. Boyd's gin, the Crescent Oil Company's gin, there, was engaged in ginning and buying seed.
A. Yes, sir.

Q. This seed they got out of the cotton ginned at his gin he bought?

A. Yes sir.

Q. The seed that came out of the cotton ginned at your gin, you bought?

A. Yes, sir.

Q. And one of the principal businesses in running a gin was to get the seed.

A. Well, not with us.

Q. Don't you make more profit out of the seed?

A. Well, maybe we did, we run it for the benefit of the farmers, farmers owned it—to get as much for the seed as we could give them. That's the way we started out and the way we run it.

Q. Boyd kept bulling the market on the seed?

A. Yes, sir, one way or the other.

Q. Breaking out of the agreement and paying higher for the seed?

A. The way he done, he come down there, and if he couldn't buy so much seed at the gins, he would cut on the price of ginning.

Q. And then advance the price of seed?

109 A. Yes, sir.

Q. Then he reduced the price of ginning and raised the price of seed?

A. Yes, sir.

Q. That was about as advantageous to the farmer as anything could happen to them?

A. In one way, it was. If he didn't cut it down the next week the other way.

Q. Didn't he cut it down the next week?

A. I don't know whether he did the next week, or not, but it was done, though.

Q. Was that done after you went to see him to get him back into line?

A. No, not after he went to Memphis.

Q. After you went to see him?

A. Didn't go to see him. I didn't, not as I know of.

Q. You, in operating your gin had an arrangement with the oil mill to take the seed off of your hands?

A. Didn't the second year.

Q. Then you made an arrangement with another oil mill?

A. Buckeye.

Q. Whatever you paid for seed they paid $2.25 profit over that, regardless of what you paid?

A. Yes, sir, said they would stand by us, and did so.

Q. Didn't make any difference to you then?

A. Only as a neighbor.

Q. Only as a neighbor?

A. Yes sir.

Q. What do you mean by that?

A. If prices went up, we would go and agree on a price and allow

us $2.25 and didn't have anything out. They all agreed to it until he went to fighting us.

Q. You and the other gentlemen would agree on price?

A. Yes, sir, and Mr. Boyd wouldn't agree to that.

Q. He would advance the price?

110 A. No, sir, he didn't pay more, he paid less. It didn't hurt us at all. Made them gin and wrap for $1.50.

Q. Isn't the reason you made that agreement with the Buckeye that Boyd was paying more for seed than you could afford to pay?

A. No, just cutting prices on the ginning.

Q. Did the Buckeye agree to take care of your ginning?

A. Yes, sir.

Q. To pay the difference in ginning?

A. Whatever it cost.

Q. Or then give you $2.25?

A. To handle the seed.

Q. That was the situation you were in?

A. Yes, sir.

Q. In the buying of seed, the man who operates a gin has a great deal of advantage over a man who doesn't operate a gin?

A. Not much.

Q. When a fellow drives up with his seed to a gin now, drives his wagon under the seed cotton is sucked up into the gin?

A. Yes, sir, weighed first.

Q. Sucked up into the gin?

A. Yes, sir.

Q. And *blew* over into the seed houses?

A. Yes, sir.

Q. And he is paid for the difference between the seed cotton?

A. And the lint.

Q. And doesn't have any more work than to hunt up somebody to buy it?

A. Yes, sir.

Q. Wouldn't a man who hasn't got a gin have a great deal more advantage over another one who has?

A. Don't know, you raise the market $2.25, don't see any advantage.

Q. Suppose I would come into Ruleville and didn't own a

111 gin and did own the only gin in town; if you and I offered the same price for seed exactly, you operating a gin and me not operating one, so if a man was going to sell me his seed he would have to catch them in his wagon and haul them to the seed house?

A. Yes, sir.

Q. You would buy the seed?

A. Yes, sir.

Q. You would have the advantage over me in buying the seed?

A. Yes, sir.

Q. If a man has an oil mill he wants to get cotton seed for to go into a town where he doesn't own a gin where he undertakes to buy the seed he is at a great disadvantage competing with a man?

A. I should think he had an advantage.

Q. The gin man is a great *j*elp in buying the seed?
A. Yes, sir.
Q. You do know the Crescent Cotton Oil Co. is engaged in the manufacture of cotton seed into oil in the city of Memphis?
A. Yes, sir.
Q. They have to get cotton seed from somewhere to run their oil mill with?
A. Yes, sir.
Q. It is a great help in buying cotton seed to have a gin?
A. Indeed it is.
Q. The seed out of all the cotton ginned in the Crescent Cotton Oil Co. gin were shipped by them to their mill at Memphis, was it not?
A. I don't know.
Q. Do you know of any that went anywhere else?
A. No, I do not.
Q. You know of none that went anywhere else?
A. No, sir.
Q. You know of no seed that was ginned at the Crescent
112 Cotton Oil Co.'s gin that they failed to buy?
A. I do not.
Q. So far as you know and your best judgment is now that they buy all the seed?
A. Yes, and some outside.
Q. And all of this seed they buy through their gin they buy to be shipped to their mill at Memphis to be there manufactured into oil, and other products?
A. Yes, sir.
Q. That was the business they were carrying on in 1914?
A. 1913 or 1914. It was, wasn't so much.
Q. They kept on with that same business ever since that?
A. Yes sir.
Q. Put up their gin in 1910?
A. Yes, sir.
Q. Were you interested in a gin there before the Crescent came in?
A. No, sir.
Q. You first became interested in the gin business when the Quiver gin was put in?
A. Quiver Gin.
Q. You could and did agree with the managers of all the gins except the Crescent on the price to be charged for ginning?
A. Didn't agree with them. Didn't see anything for it. When they cut the price, I don't know as I ever spoke to Shelton, I never spoke to any of the rest of them. When they raised the price of seed, nor put it down, I don't know, the other persons I didn't know.
Q. I am talking about Marshall?
A. Yes, I would see Marshall, or the man running the gin, or Edmondson, and when the prices were changed I would tell it so that they would all know.
Q. The purpose in talking with them was that you would all pay the same price?

A. Yes, sir.

113 Q. So there would be no competition in price? As long as everybody agreed to it, everything was satisfactory as to gins?

A. Yes, sir.

Q. If they had all stuck to the same price there never would have been any trouble?

A. Never at all.

Q. This offer to buy the gin would never have been made?

A. We didn't want it.

Q. The only reason you were trying to get him out was because he wouldn't stay in line like the balance of you?

A. Yes, sir.

Q. And caused differences and competition in the price of seed there in Ruleville and made dealing in seed less profitable than it would be?

A. Yes, sir, it didn't with us, it did with the others.

Q. The reason it didn't with you, you had an agreement with the Buckeye to meet any price that he put on?

A. Yes, sir.

Q. But there never would have been any of this trouble with Boyd at all if he had stuck to the prices you all fixed for ginning and stuck to the prices you all fixed for paying for cotton seed?

A. Yes, sir.

Q. If he had stayed in line with the prices you all were fixing.

A. If the prices would go up we would notify one another.

Q. He wouldn't abide by the notices you would give him?

A. No, not if he couldn't buy so much seed there.

Q. His not abiding by this price the balance of you agreed on was what caused the peaceful and harmonious arrangement that existed with the seed buyers at Ruleville falling through?

A. Yes, sir.

Q. That's the reason he was put in the Dirty Dozen?

114 A. I don't know about putting him in the Dirty Dozens. He tried to put us in the Dirty Dozens. He tried it pretty hard.

Q. That's the only reason you couldn't get along with him?

A. That's the only reason.

Mr. MARSHALL, re-called by the State.

Direct examination.

By Mr. Robinson:

Q. Mr. Marshall, what would happen if the gins at some place charged different prices for seed? What happens then—what becomes of the ginning custom?

A. The man ginning the cheapest gets all of the cotton.

Q. Cotton to gin?

A. Yes, sir.

Q. If that occurs continuously, what happens?

A. They couldn't get any more business.
Q. Would the farmer be benefitted by a cut-throat proposition? or not?

Objection by Counsel for the Defendant.
Court: Sustained. It is a leading question.
Exception.

Q. What would be the financial effect on the farmer by this kind of competition in ginning at a given point?
A. Well, for a short time he might be benefitted, but in the long run he would lose.
Q. In what way?
A. It would be necessary—I would like to explain that to Mr. Shands. That's the very thing I have tried to prevent, and if ever I have honestly endeavored to do a thing, it's been in this ginning business. If the gins maintained a fair and legitimate price and we figured about $2.00 for seed with the expense. I will answer it, clear up an old point. I will explain this whole thing. Then if one gin would charge this price for their ginning, it would mean this gin would get all the business.

115 Objection by Mr. Shands to the answer as not being responsive to the question.
Court: Let him go ahead.
Objection overruled.
Exception.

Q. What, then, would happen in the natural course of events to the other gin?
A. Put them out of business.
Q. Then the remaining gin would be in position to charge as much as it wanted to?
A. Yes, sir, it would create a monopoly for one gin to control the price of seed.

Cross-examination.

By Mr. Shands:

Q. You were answering a hypothetical question put to you by the Asistant Attorney General. I want to ask you as to concrete fact at Ruleville. No gin was put out of business at Ruleville?
A. No, sir, for these controversies were not in effect but a short while.
Q. On the other hand, after the building of the gin by the Crescent Cotton Oil Company, there was an extra gin built in the face of this competition that was being carried on by the Crescent, was there not?
A. Yes, sir, the Quiver Gin built there.
Q. So practically your theory is answered at Ruleville, is it not?
A. Well, if it continued for a week or two at a time, wouldn't put a gin for that period out of business, but if continued one or two

years, it would naturally happen. We did our best to keep it from being continued that way.

Q. The Crescent's gin was in operation for five years before this suit was instituted, 1910, 1911, 1912, 1913, 1914 and 1915, six years?

A. Until there was a law passed where they could be handled.

116 Q. The law was passed in March, 1914, wasn't it?

A. After the gin season was over.

Q. The gin season of 1914 or 1915 came on, didn't it?

A. March, 1914—the gin season of that fall.

Redirect examination.

By Mr. Robinson:

Q. What has been the situation in reference to what you term unfair competition with the Crescent since this suit was filed in 1915?

A. They have gone along without any fight whatever, without any controversy whatever.

Recross-examination.

By Mr. Shands:

Q. The United States Government has been fixing the price of ginning?

A. This past season, 1918 and 1919 for ginning.

Q. When were the prices for seed fixed by the government?

A. This last season. Now the gins, some of them, Mr. Boyd's refused to take seed at all.

A. That's because the seed are not sound?

Court: No, because they haven't got a place to store the seed.

Agreement.

It is agreed between Counsel that the 15th day of May, 1916, was the third Monday of the month of May.

State rests.

For the Defendant.

Mr. Alston Boyd, witness for and on behalf of defendant, being first duly sworn, on oath, testified as follows:

Direct examination.

By Mr. Shands:

Q. Where do you live?

A. Memphis.

Q. What connection, if any, have you with the Crescent Cotton Oil Company?

117 A. Secretary, Treasurer and General Manager.

Q. What business are they engaged in in Memphis?

A. Manufacture of cotton seed products and the crushing of cotton seed.

Q. How many mills does the Crescent Cotton Oil Company own?

A. One.

Q. Where is it located?

A. Memphis, Tennessee.

Q. Is the Crescent Cotton Oil Company interested in any oil mill in the State of Mississippi at all?

A. No sir.

Q. Has it ever been?

A. No sir.

Q. How long has the Crescent Cotton Oil Company been engaged in the manufacture of cotton seed in the city of Memphis?

A. About twenty seven years.

Q. What business, if any, has the Crescent Cotton Oil Company carried on in the State of Mississippi?

A. We have continuously bought cotton seed in Mississippi since we went into business, and shipped them to Memphis to crush in our mill there.

Q. Of the seed you bought in Mississippi was any disposition made of them except to crush?

A. Not in any case, except the railroad embargo, railroads would not permit our seed to go to Memphis, tying up equipment too much, and then when we had cotton seed we had to re-ship them to Arkansas or Tennessee.

Q. Did you ever purchase seed in Mississippi for any other purpose than to be crushed?

A. No sir.

Q. Has the Crescent Cotton Oil Company operated gins in Mississippi?

A. Yes sir.

Q. At what point?

118 A. Ruleville and Love Station.

Q. What county is Love Station in?

A. De Soto County, Mississippi.

Q. What county is Ruleville in?

A. Sunflower County.

Q. What is your purpose in operating gins in Mississippi?

A. Requirement of seed for our mills at Memphis.

Q. Why is the operation of a gin desirable or profitable for carrying out your purposes in requiring seed?

A. It saves the seed from passing through so many hands. It enables the mills to pay over to the purchaser where they handle direct. They don't have any middle men in there to take half the money that goes to the purchaser.

Q. Do you know of any custom that has grown up in Sunflower County and other points as to handling of seed in their gins?

A. So far as my knowledge goes, all the seed is handled by the gins.

Q. As to the construction of the gins—explain whether it is easy for a man to gin cotton at one gin and take his seed and sell to some one else other than the gin?

A. It is not. If the gin buys and handles the seed, the farmer drives up to the gin, his cotton is sucked out of his wagon and he goes on back home for another load, or goes where he pleases—he is through. If the gins don't handle the seed, he has to wait there until his bale is ginned, and then he has to catch his seed in his wagon and haul them off somewhere else and unload them with a fork in a house. In other words, it means much less time and much less expenditure on either the farmer or on the purchaser to handle his seed.

Q. Under the practice that has obtained in Sunflower County since 1910, had it been possible for a man who didn't own or operate a gin to compete with a man owning a gin with the purchase of seed?

119 A. It has not.

Q. So then, it was necessary for you, to be able to compete with the gin, to own a gin—to operate a gin?

A. Yes, sir, but I will state before we built our gin at Ruleville, our travelling man would go to various stations along the line and they would report to us the price the gins were paying the farmer and what the gins were selling seed for in carload lots. From my own knowledge, I am sure there wasn't a point in Mississippi where the gins were maintaining such a tremendous difference in price on seed between what we were paying the producer and carload price. It was really unfair to the producer the difference being maintained there.

Q. You mean the profit that was demanded by the ginner between the price he paid the farmer and the price demanded by the oil mill?

A. Yes, sir. They had close combination there at Ruleville and were making the farmers sell seed for as much as ten or twelve dollars a ton under the carload price.

Q. There was some testimony in here yesterday by witness Marshall, that on one or more occasions, one I believe in 1910, you went to him and tried to buy five cars of seed at a given price which he declined to sell, and you then told him you would put on a fight. You had to get the seed. State if anything of that kind happened, and why it happened, and what was done?

A. We had some cotton seed products sold and had more products than we had seed to make them out of, and I was in touch with the prices being paid for seed being paid in other territories like Texas and the southeast, and seed in those territories was very much higher than in the valley section and were rapidly advancing, so in order to cover our contracts, I tried to buy the seed from Mr. Marshall and explained to him if we couldn't get them from him, we were going to have to buy them right quick.

120 Q. Were you able to buy from him at prices current at Ruleville at that time?

A. No, sir, he wanted more than the prevailing prices on the Y. & M. V. Railroad at that time.

Q. What did you do in an effort to get seed to cover your contracts?

A. We went out to try to buy them through our gin or anywhere else we could buy them,

Q. In order to get more seed to your gin, what inducement did you hold out to the farmer?

A. We put down the price of ginning to $1.50 a bale.

Q. For how long did you maintain that?

A. Five days.

Q. Did you, or not, during those five days, get the seed you had to have to meet your pressing emergencies?

A. We did.

Q. Was the price of ginning then restored?

A. Yes, sir.

Q. There was some testimony on yesterday as to the cost of wrapping a bale of cotton in the season of 1915. I will ask you how many gins you operated at different points, Mr. Boyd?

A. We operated about eleven, I believe.

Q. I am talking about in 1915.

A. In 1915 we were operating, I don't remember, seven or eight, to the best of my knowledge.

Q. Do you know what it cost you to wrap a bale of cotton in the fall of 1915?

A. Yes, sir.

Q. What did it cost?

A. Eighty-two cents.

Q. That was for the bagging and ties?

A. Yes, sir.

Q. Didn't include the labor?

A. Yes, sir.

121 Q. What the bagging and ties cost you at the gin?

A. Yes, sir. I will state what the gentleman testified yesterday—he probably forgot the war broke out in 1914 and cotton, bagging and ties went to the bad. Went way down in price.

Q. Where did you buy your bagging?

A. Dundee, Scotland.

Q. Were you enabled thereby to get it at less prices than the trust prices in America are?

A. Yes, sir.

Q. Do you remember where you bought the ties?

A. From Carnegie Steel Company.

Q. Direct from the producers?

A. Yes, sir.

Q. And not from the jobbers?

A. No sir.

Q. Did you get the same prices the jobbers get?

A. Yes, sir.

Q. It cost you, therefore, eighty-two cents to wrap?
A. Yes, sir.
Q. What is the capacity of your gin at Ruleville?
A. We gin as high as seventy-two bales there in a working day.
Q. What does it cost you to operate that gin?
A. Our labor ran from $105.00——

Objection by Mr. Robinson to this testimony, as the books of the Company would be the best evidence of the cost. It necessarily follows that in view of the fact that Mr. Boyd lived in Memphis he could not personally know as to the actual expenditures at Ruleville for labor, or how many men worked, because he wasn't there, and it would be hearsay.

Ruling reserved.

Q. Who signs your pay checks and does the paying?
A. At Memphis?
A. Yourself?
A. I do.
122 Q. Are you the man that actually pays the bills?
A. Yes, sir, I sign the checks.
Q. Who checks all these checks to see if they are presented in the bank?
A. It's done in my office.
Q. You are the man who draws the checks to pay the labor?
A. Yes sir, I sign the checks.
Q. Do you know how much labor you paid off per week during that season to operate the gin at Ruleville?
A. Yes sir.
Q. Of your own knowledge and not from hearsay or from anybody else?
A. Yes, sir I do.
Q. What was it?
A. From $105.00 to $125.00 per week.
Q. What was the average cost per day that season for the operation of your gin plant at Ruleville?
A. When we were running full time it would cost $125.00 for labor per week for six days, and the coal would cost $90.00, $215.00, and we had a manager's salary, we have our managers on a sliding scale depending on how much business they would do. $35.00 a week would cover it. $245.00 a week.
Q. That's how much per day?
A. About $41.00 per day.
Q. At a ginning capacity of seventy bales of cotton per day, how much would you have to get a bale to break even?
A. Eighty-two cents for bagging and ties——
Q. Eliminating the bagging and ties, how much would you have to get for ginning?
A. $41.00.
Q. About how much per bale, seventy-two bales?
A. About fifty-seven cents a bale.

Q. That was the actual cost of labor a bale for the operation of that ginning per bale?

123 A. Running capacity, yes sir.

Q. And the ginning and wrapping cost you eighty-two cents?

A. Yes sir.

Q. I will ask you if any month since you have been operating a gin at Ruleville, at the prices charged by you, your gin failed to show a profit?

A. No sir, never failed to show a profit on ginning any month we have been operating the gin on the prices charged by us.

Q. Has there ever been any season that gin failed to show a fair profit on your investment?

A. No, sir, never has.

Q. When you speak of that, do you mean the profit from the ginning dissociated from any other profit you might make on the seed, ginning and wrapping?

A. Yes, sir.

Q. Do you remember what your average percentage of profit has been on your investment arising from the ginning operations alone?

A. It has been more than fifteen per cent, but I don't remember exactly.

Q. That's at Ruleville?

A. Yes, sir.

Q. That's not taking into consideration the dealing in seed at all?

A. No sir.

Q. Figuring the price that you had to pay for seed there while you were running a gin as cost to you and the price which was a carload price at Ruleville for those seed, what was your percentage of profit?

A. The average percentage of profit would be in excess of thirty per cent per annum.

Q. Carrying on the operations exactly as carried on there since you went into business there in 1910?

124 A. Yes, sir.

Q. Is thirty per cent profit amongst business men considered a fair return on investments?

A. I think it's excellent on the character of gin like that.

Q. What was the value of your gin plant at Ruleville in October, 1915, if you know?

A. You mean of the buildings and machinery?

Q. Yes, sir of the things you got there? What would be a fair value of the property building, of the machinery lease and side track and everything you had around there. Everything used in connection with the operation of the gin.

A. Well, the value of a proposition like that depends largely on its earning capacity. Based on that, I would say $15,000.00. Based on the actual cost of replacing the property, the physical valuation, I would say $12,000.00.

Q. By whom was the assessment of your property for taxes made there?

A. By the Town of Ruleville, through its Board of Aldermen, I would suppose you would call it.

Q. At what was your gin assessed for taxes?

A. $10,000.

Q. How long had it been assessed at that same price?

A. I can't state that from memory—for some years.

Q. The same price for some years?

A. Yes, sir.

Q. Look at this paper I hand you and state what this is?

A. This is a receipt from the Town of Ruleville, dated January 26, 1915, for $120.00, town taxes fiscal year 1914, on the gin and ground that we operate there.

Q. Marked under there, "paid under protest." What does that mean?

A. We investigated the assessment of the other two gins there both of which were double the size of ours, and both assessed for much less than our assessment. We felt that we were very unfairly discriminated against in this assessment.

By Mr. Shands: I offer this in evidence as Exhibit 1 to the testimony of Mr. A. Boyd.

EXHIBIT 1 TO TESTIMONY OF A. BOYD.

No. 22. Marshal's Office. $120.00.

Town of Ruleville, Miss., Jan. 26th, 1915.

Received of Crescent Cotton Oil Co., Town Tax Fiscal year 1914, as per following statement and Descriptions of property, to-wit:

Realty ——.
Personalty ——.
Total realty and personalty 10,000.00.
Statement of tax ——.
Description of real estate ——.
Valuation ——.
General Imp. fund ——.
Poll tax ——.
School ——.
Paid under protest.
Rate 12 mills.
Total tax $120.00.
Total valuation $10,000.00.

C. W. SANDRIDGE,
City Marshall.

Q. I hand you a document containing three pages of typewritten matter and a pencil schedule and ask you to state what that is?

A. This is a detailed, itemized appraisal of our gin plant, I mean of the buildings and machinery, exclusive of the ground, and side-track, in Ruleville, Mississippi.

Q. By whom was that made?

A. Made by R. N. Fort, expert Appraiser and Engineer.

Q. For what purpose, howe had that appraisal of property been made?

126 A. We were having all our gin properties and mill properties in detail for fire insurance purposes.

Q. What line of business was the man engaged in that made that appraisal.

A. Expert valuation engineer.

Q. State to the court, if you know, in what sort of detail they make appraisals?

A. They make it in great detail, as this paper shows. They have every piece of machinery down separately and its value. Also each detail of the building in the way of lumber, roofing, and so forth. All set out in itemized form, and they set out the value of the building material and the cost of erecting it new, and then they take off what depreciation the property shows and leave in the set of figures showing its actual sound value less depreciation from use with age.

Q. Under the custom of business, is the appraisal of these people accepted by the insurance underwriters as a basis for insurance?

A. Absolutely, and they will settle a loss without a word on one of these appraisals, pay whatever will be the value at a fire loss.

By Mr. Shands: I offer that in evidence, with the statement that the gentleman who made this is now in the Army and it is agreed that if he were present, he would testify this appraisal was accurately made by him, showing the insurable value of this appraisal at Ruleville exclusive of the ground and spur track to be $9,877.89 on May 9th, 1918.

Q. What change if any, had there been in this property between October 15th, and the date of this appraisal?

A. Well, the property had been used for ginning in the meantime. While we always endeavor to keep properties right up, those several ginning seasons had gone along and the property used.

127 Q. That would mean in 1915 it had less depreciation than at the time of the appraisal in 1918? In other words, it was more valuable in 1915 than in 1918?

A. Yes, sir.

EXHIBIT 2 TO TESTIMONY OF A. BOYD.

Appraisal.

Ruleville Gin, Ruleville, Mississippi.

Crescent Cotton Oil Company,

Owners.

May 2nd, 1918.

Item No.	New value.	Depreciation.	Sound value.
1 Gin Machinery	$4,520.76	$1,130.19	$3,390.57
2 Power	4,719.84	1,067.37	3,652.47
3 Gin House	1,467.41	366.65	1,100.56
4 Engine and Boiler Room	432.49	108.12	324.37
5 Cotton House	449.20	89.84	359.36
6 Seed House	786.48	196.62	589.86
7 Scales	160.00	24.00	136.00
8 Extras No. 1	369.00	36.90	332.10
9 Extras No. 2	110.13	27.53	82.60
Totals	$13,015.31	$3,047.42	$9,967.89
Uninsurable Values			90.00
Insurable Value			$9,877.89

R. W. FORT & COMPANY,
Valuation Engineers,
By R. W. FORT,
By E. E. HOLCOMB.

1. Gin Machinery.

320 saw continental outfit; 4-80 saw munger huller gins; 4-50 Saw continental feeders; 320 saw continental condenser; 320 saw metal lint flue; 320 saw belt elevator, 45" single fan all pipe and connections to wagon telescope, Seed handling equipment blowing to seed house. Transmission 2 story standard for 320 saw continental outfit. Munger double box press with steam hydraulic power and steam automatic packer. Continental Class "C" cotton cleaner with connection and driver $3,934.79

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Freight and Drayage	192.50
Installation	393.47
New Value	$4,520.76
Depreciation	1,130.19
Sound Value	3,390.57

No.2. Power.

66 x 16 Boiler with ¾ C. I. Front 30 x 40 steel stack..	2,069.55
Steel suspension and casing.....	637.00
Steel setting and installation.....	150.00
Freight and Drayage.....	264.00
New Value	3,120.55
Depreciation	624.10
Sound Value	2,496.45
No. 6 Simms Heater.....	188.10
Pemberthy Injector 1½".....	21.60
4½ x 2¾ Pump Duplex.....	85.50
Steam Pipe and connections (extra).....	25.00
Freight and Drayage.....	20.00
Installation	25.00
New Value	$365.20
Depreciation	73.04
Sound Value	$292.16
14 x 20 side crank continental throttling steam engine	921.23
21' – 16" 5 ply rubber belt.....	104.30
54 x 16 pulley.....	53.56
Engine Foundation above grade.....	20.00
Freight and Installation.....	135.00
New Value	$1,234.09
Depreciation	370.23
Sound Value	$863.86
Total New Value	4,719.84
" Depreciation	1,067.37
" Sound Value	$3,652.47

129 No. 3. Gin House.

20 x 70 x 22 Two-story Frame building with G. I. Walls and Roof
12 x 44 Telescope Shed. 30 x 34 Cotton Platform.

Lumber 14,268″ at $30.00 per M.	$428.0
Labor	142.0
Nails and Hardware	42.0
G. Iron 84 Sqs. at $8.50	714.0
10 8 Light Windows	50.0
Double Door	10.0
2 Single Doors	15.0
40′ track and hangers	11.6
9 Brick piers	54.0
New Value	1,467.4
Depreciation	366.8
Sound Value	1,100.5

No. 4. Engine and Boiler Room.

32 x 36 x 14 Frame building with G. I. Walls and roof.

Lumber 2691′ at $30.00 per M.	80.7
Labor	26.9
Nails and Hardware	10.0
—. *Grio* 33 Sqs. at $8.50	280.4
2 8 Light windows	12.0
1 Single door	5.0
1 Double door	7.5
20′ track and hangers	4.9
Rain proof for stack	5.0
New Value	432.4
Depreciation	109.1
Sound Value	324.3

No. 5. Cotton House.

16 x 50 x 12 Frame building with box walls and G. I. Roof.

Lumber 6780 at $30.00 per M.	203.4
Labor	67.8
Nails and Hardware	20.0
G. Iron 18 Sqs. at $8.50	153.0
2 6 x 6 Windows	5.0
New Value	449.2
Depreciation	89.8
Sound Value	$359.3

No. 6. Seed House.

20 x 60 x 14 Frame building with box walls and G. I. Roof.	
Lumber 11,937′ at $30.00 per M	358.11
Labor	119.37
Nails and Hardware	36.00
G. Iron 22 Sqs. at $8.50	187.00
2 6 x 8 windows	10.00
24 piers	36.00
Double seed box	40.00
New Value	786.48
Depreciation	196.62
Sound Value	589.86

No. 7. Scales.

8 x 22 Six Ton wagon scales with double beam, new value	160.00
Depreciation	24.00
Sound Value	136.00

No. 8. Extras No. 1.

700 lb. Cotton scales with frame	40.00
Steam and water lines in gin house	25.00
14 Electric Lights	49.00
28″ Grist Mill and drive belt	225.00
Freight and Installation	30.00
New Value	369.00
Depreciation	36.90
Sound Value	332.10

No. 9. Extras No. 2.

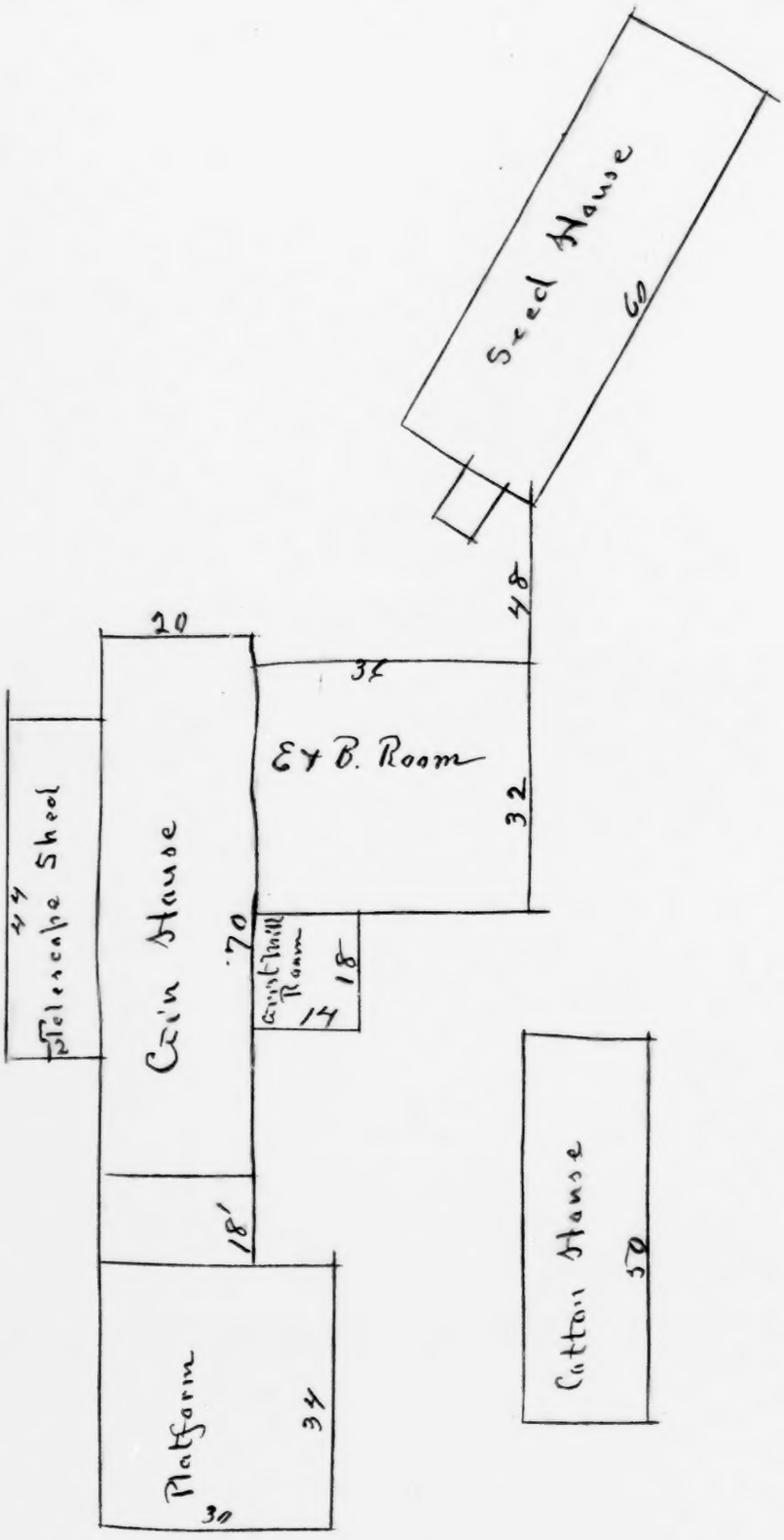
14 x 18 x 12 Frame building with composition roof.	
Lumber 1,672′ at $30.00 per M	50.16
Labor	16.72
Nails and Hardware	6.00
Doors and Windows	7.50
131	
Composition Roof	29.75
New Value	110.13
Depreciation	27.53
Sound Value	82.60

Q. I hand you another paper, herewith, containing three sheets of typewritten matter, one sheet of pencil sketch, and ask you to state what that is?

A. Appraisal, in the same form, and by the same parties, of our gin property at Love, Mississippi, exclusive of the real estate and railroad side track.

By Mr. Shands: That is offered as Exhibit 3 to the testimony of Mr. Boyd, the paper showing the sound value on May 4, 1915, $6,788.60, exclusive of the real estate and side track.

(Here follows drawing marked page 131½.)



Ruleville Gin Ruleville Miss

Crescent Cotton Oil Co.

Owners

Scale 1"-20' May 2 18

R. W. Fort & Company

Valuation Engineers.

Dallas Texas

No. 891
Oil Co } p. 13, 11½.

Q. Do you know what the fair market value of the real estate owned by you at Love, and of the lease owned by you at Ruleville and the siding at Lowe, and *of the lease owned by you at Ruleville and the siding at Love and* Ruleville were in October, 1915;

A. I know they were worth in excess of $1,500. I don't know how much more. I paid over $800.00 for the side track, and I know our yard at Love is worth not less than $500.00, and our lease at Ruleville cost us a great deal more than $500.00 in addition to the rent we pay there.

Q. How long have you known Mr. A. L. Marshall who testified?

A. Since 1909 and 1910.

Q. I will ask you if you had any litigation nominally with the Town of Ruleville when you first started to building the gin there?

Objection by Mr. Robinson because the State of Mississippi was not a party to that litigation and could in no way be bound by the
132 litigation, no matter what the result would have been.

Court: Ruling reserved.

Q. I will ask you to state if you had some litigation with the Town of Ruleville nominally about the time you started building your gin there in 1910?

A. Yes sir, we did.

EXHIBIT 3 TO TESTIMONY OF MR. A. M. BOYD.

Appraisal.

Love Gin, Love, Mississippi.

Crescent Cotton Oil Co., Owners.

May 4, 1918.

Item No.	New value.	Depreciation.	Sound value.
1 Gin Machinery.....	$3,933.23	983.31	2,949.92
2 Power	2,769.42	732.88	2,038.54
3 Gin House	1,212.14	242.42	969.72
4 Engine & Boiler Room.	251.67	62.92	188.75
5 Hill House	121.90	24.38	97.52
6 Seed House	410.78	102.69	308.09
7 Scales	100.00	25.00	75.00
8 Tank and Tower.....	189.32	94.66	94.66
9 Extras	85.50	17.10	68.40
Totals	$9,073.96	$2,285.36	$6,788.60

R. W. FORT & CO.,
By R. W. FORT,
By E. E. HOLCOMB,
Valuation Engineers.

No. 1. Gin Machinery.

240 Saw Lummus 2 Story outfit; 3-80 saw Lummus Huller Gins; 3-80 Saw Lummus Feeders; 240 Saw Lummus Condensers, 3-80 Saw Metal Lint Flue; 240 Saw Elevators and Distributor; 35" Single Fan, all pipe and connections to wagon telescope. Seed handling equipment blowing to seed house. Transmis-	
133 sion 2 story standard for 240 saw Lummus outfit. Lummus double box press with screw power and steam packer. Lummuc vacuum box cotton cleaner	$3,425.67
Freight and Drayage	165.00
Installation	142.56
New Value	3,933.23
Depreciation	983.31
Sound Value	2,949.92

No. 2. Power.

54 x 14 Boiler with ½ C. I. Front and fixtures, 34 x 40 steel stack	1,309.35
Wood suspension	35.00
Brick setting and installation	300.00
Freight and drayage	108.00
New Value	1,752.35
Depreciation	438.08
Sound Value	1,314.27
1½" Hancock Inspirator	21.60
Steam pipe and connections (extra)	20.00
Freight, drayage and installation	10.00
New Value	51.60
Depreciation	5.16
Sound Value	46.44
14 x 16 Side crank Southern Steam engine	724.00
73'-14" 5 Ply Rubber Belt	101.47
40 x 16 Drive Pulley Engine Foundation above grade	20.00
Freight and Installation	120.00
New Value	965.47
Depreciation	289.64
Sound Value	675.83

Total New Value	2,769.42
" Depreciation	732.88
" Sound Value	2,036.54

134 No. 3. Gin House.

22 x 58 x 24, Two Story Frame building with G. I. Walls and roof; 4 x 18 x 16 Tel-scope Shed; Bale Cotton Platform:

Lumber 9,616' at $30.00 per M	288.48
Labor	96.16
Nails and Hardware	30.00
G. Iron 70 Sqs. at $8.50	595.00
12-12 Light Windows	60.00
1 double door	7.50
5 single doors	25.00
Concrete Piers	70.00
Double seed binds under telescope shed	40.00
New Value	1,212.14
Depreciation	242.42
Sound Value	969.72

No. 4. Engine and Boiler Room.

24 x 30 x 12 frame building with G. I. walls and roof:

Lumber 1,548' at $30.00 per M	46.44
Labor	15.48
Nails and Hardware	6.00
G. Iron 16 1.2 sqs. at $9.50	140.25
2–12 Light Windows	10.00
1 single door	5.00
1 double door	7.50
Concrete Piers	21.00
New Value	251.67
Depreciation	62.92
Sound Value	188.75

No. 5. Mill Room.

10 x 24 x 12 frame building with G. I. walls and roof:

Lumber 1,235′ at $30.00 per M		37.05
	Labor	12.35
135	G. Iron, 7 Sqs. at $8.50	59.50
	Nails and Hardware	3.00
Doors and Windows		10.00
	New Value	121.90
	Depreciation	24.38
	Sound Value	97.52

No. 6. Seed House.

16 x 10 x 14 frame building with box walls and G. I. roof:

Lumber 6,604′ at $30.00 per M	198.12
Labor	66.04
Nails and Hardware	20.00
G. Iron, 9¼ sqs. at $8.50	78.62
Seed Windows, 2	4.00
Door 1	3.00
16 Sqs. painting	32.00
Wood Blocks	9.00
New Value	410.78
Depreciation	102.69
Sound Value	308.09

No. 7. Scales.

8 x 12 four ton wagon scales with single beam installed:

New Value	100.00
Depreciation	25.00
Sound Value	75.00

No. 8. Tank and Tower.

24′ Tower:

Lumber 1,644′ at $30.00 per M	49.32
Nails	5.00
8 x 9 Tank (placed)	135.00
New Value	189.32
Depreciation	94.66
Sound value	94.66

136 No. 9. Extras.

700# bale cotton scales with frame	$40.00
Steam water lines in gin house	20.00
50'—1' Linen fire hose	7.50
2 Chemical Fire Extinguishers	18.00
New Value	85.50
Depreciation	17.10
Sound value	68.40

Q. Did you learn of any connection that A. L. Marshall had with the instigation of that litigation?

A. Yes, sir, Mr. Marshall was a member of the town Board of Aldermen and was the most active man down there and he was fighting the proposition of our gin going in there in competition, with gins that were interested in there.

Q. Do you know who paid the expense of that litigation on the part of the town?

A. Yes, sir.

Q. Who did you learn paid it?

A. The other gins there. The idea was to keep us out as competitors because they knew if we went in there we wouldn't continue to ask the farmers to sell seed for ten or twelve dollars a ton under the carload price. Of course, that meant a lessening of their profits, and they were fighting to keep us out.

Q. Do you know what connection Mr. Marshall and the other interests had in paying the expenses of the litigation?

A. Yes, sir, they paid it.

Q. Was there any other litigation that you learned about in connection with Mr. Marshall?

A. We were making too much noise with the gin—being a nuisance to residence three hundred yards from the gin.

Q. Do you know who paid the expenses of that litigation?

137 A. Yes, sir.

Q. Who?

A. Mr. Marshall.

Q. Did he live in the house?

A. No, sir.

Objection by counsel for the State.

Ruling reserved.

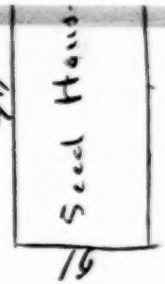
Q. Did you know Mr. Marshall was a member of the Board of Aldermen of the Town of Ruleville?

A. I knew he was in 1910. I don't know what his relations to the town was in 1915.

Q. Do you recall the incident of Mr. Eastland, Mr. Marshall, Captain Perry and Mr. McLain coming to your office, and there was something said about the purchase of your gin?

A. Yes, sir.
Q. Were you acquainted with Mr. Eastland before that time?
A. Never laid eyes on him in my life.
Q. Were you acquainted with Captain Perry?
A. No sir.
Q. Did you know Mr. McLain?
A. No, sir.
Q. Did you know, when he was talking with you, that Mr. Eastland was a lawyer?
A. No, sir.
Q. State the whole conversation that took place between Mr. Eastland and you in the presence of these gentlemen at that time?
A. Mr. Eastland walked in with these other gentlemen to my private office, and I asked them to have a seat. They said, no, we will just stand up. We came up here to buy your gin at Ruleville. I said I am not anxious to sell the gin. We have to have seed to run our mill and I am not anxious to sell the gin. Mr. Eastland, to the best of my recollection, turned around and walked out.
138 That's all there was to it.

(Here follows drawing marked page 137½.)



Leave Cleir

Crescent Cotton Oil Co

Owners.

Scale 1" = 20'

May 4 1918

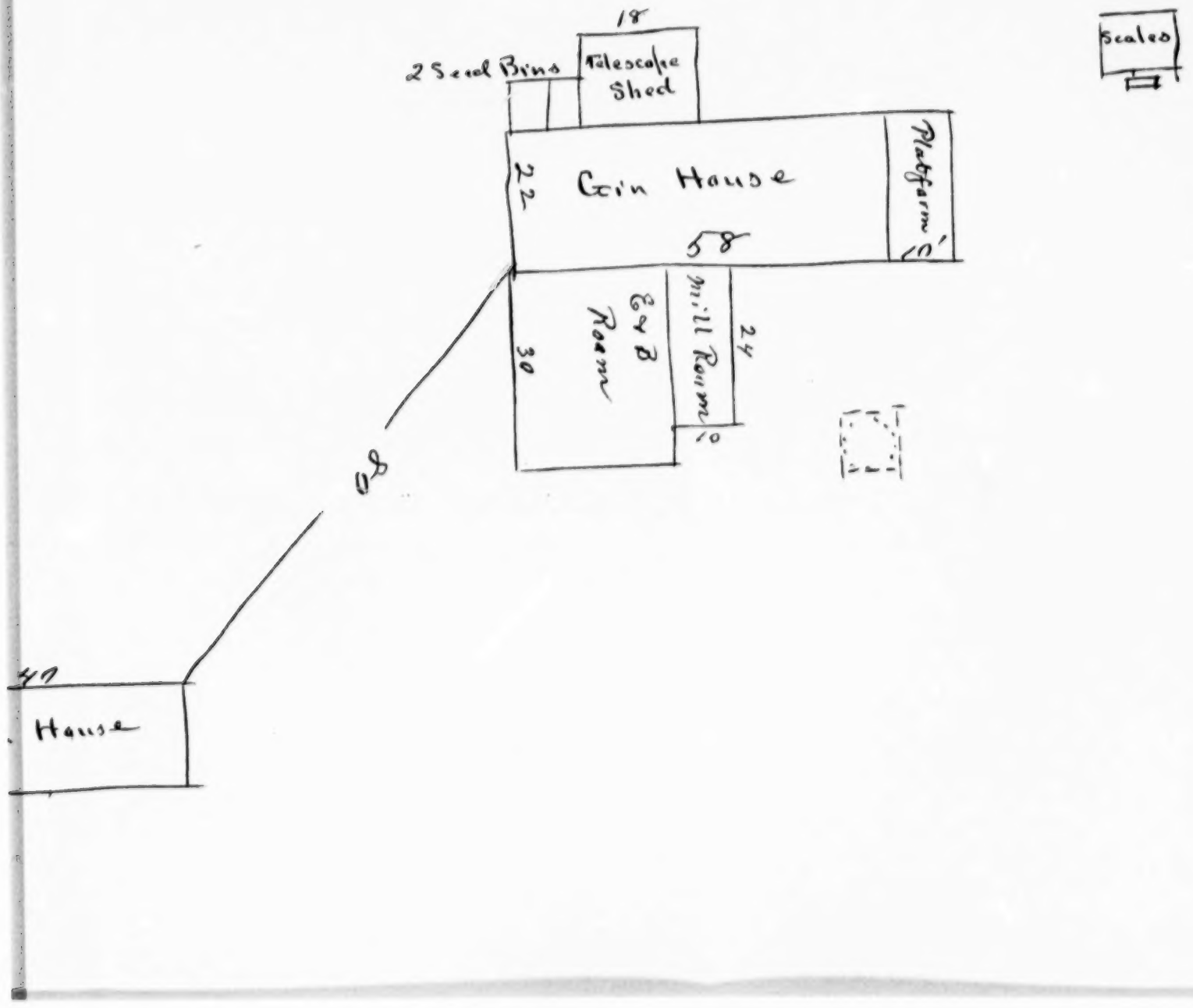
R W Fort & Company

Valuation Engineers

Dallas Texas

No. 897. Oil Co. } p. 137 1/2 v

137 1/2


18
2 Seed Bins
Telescope Shed
Scales
22
Grain House
58
Platform 12'
30
Seed Room
24
Mill Room
10
House

Q. Was there any proposition or price made to you?
A. No, sir.
Q. How long have you been in business?
A. Nineteen or twenty years.
Q. Had you been accustomed, during that time, to buying or selling property at different times?
A. Yes, sir.
Q. Did you, at the time they came in there with Mr. Marshall, have afresh on your memory the bits of difficulties you had had with Mr. Marshall in the ginning proposition down there?
A. Yes, sir.
Q. You said you had been engaged in buying and selling real estate for twenty years?
A. Yes, sir.
Q. Where people genuinely mean to buy real estate, what has been your experience as to how they approach a person as compared with how they approached you that day?

Objection by Counsel for the State for the reason that he has stated the facts.

Q. What impression was made upon you as to whether, or not, they were there for the purpose of opening negotiations with you looking to a bona fide purchase of your property?
A. From the size of the delegation that honored me with a visit, and Mr. Marshall's presence, I was absolutely morally certain there was a sort of a trick or trap being set for me.
Q. What was in your mind as to what they were trying to do?
A. I thought they were trying to lay the ground to further oppress us with the further assessment, an assessment far in excess of other gin plants there, both of which were double the size of ours, and assessed for less money than ours. But I expected the men to
139 make me some kind of an effort to raise the assessment, but they didn't do that. They turned around and walked. I don't suppose the whole conversation occupied three minutes' time, and none of them sat down.
Q. Was there anything in their demeanor, anything that even resembled an effort on their part to buy your plant?
A. No, sir.
Q. How long was that before the injunction was served?
A. Just a very few days.
Q. Had you any idea in your mind that they were baiting this trap or the assessor trap?
A. I thought it was the assessment trap.
Q. Soon after the passage of this Act of 1914 for a violation of which this suit is brought, state to the Court what, if anything you did as to ascertaining by the advice of the proper persons, what you should do in reference to the passage of the Act?
A. I took the matter up with Mr. Calvin Perkins, who represented us, and he gave me a written opinion on the matter, and I was guided by his written opinion.
Q. Who is Calvin Perkins?

A. He was a practicing attorney living in Memphis, but doing a good deal of practice in Mississippi.

Q. Do you know his general standing and how he is regarded amongst the profession in the State of Mississippi?

A. Not in Mississippi. I don't know very many Mississippi lawyers, but for a great many years, and before his death, Senator Turley was our attorney in Memphis, and whenever he had any Mississippi matters, he turned them over to Mr. Perkins, and he told me that Mr. Perkins was the best Mississippi lawyer in Memphis, in his opinion.

140 Q. He gave you a written opinion?

A. Yes, sir.

Q. Is that the opinion that is made an exhibit to your answer?

A. Yes, sir.

Q. After receiving the opinion from Mr. Perkins, did you rely upon that?

A. I did.

Q. What inquiry did you make of him—what inquiry did you submit to him?

A. I told him to please look into this gin law and advise me what to do in the matter or whether to shut the gins up or operate them, and he advised me to go ahead and operate—that it was absolutely in violation of the Constitution of Mississippi and of the United States of America.

Q. In giving the values of these properties in your testimony awhile ago, did you mean by their value that they were to be operated as gins?

A. Gin plants have two values, you might say. One is what the insurance companies call the replacement value. That's the dollars and cents.

Q. I mean, how would the value of your property, if it is to be continued in operation as a gin, compare with it, the same property, if you were not permitted to operate it as a gin?

A. If not permitted to operate it as a gin, its value would be destroyed.

Q. What's the scrap value of it?

A. I guess fifteen per cent.

Q. If you were compelled to cease the operation of that property as a gin, what would be your percentage of loss if you retained the property?

A. Eighty five per cent.

141 Q. There was something said about prices paid for cotton seed at Ruleville and the prices paid in Arkansas? I will ask you if you have been called upon by the Federal Government, at any time recently, as an expert on the price of seed—to pass on prices?

A. Yes, sir, been called to Washington several times by the United States Government.

Q. Are you a member of the Board?

A. Yes, sir, Advisory Board.

Q. Explain that to the Court?

A. The Federal Government, recognizing the fact that seed have varying prices in various localities, even in the same State, in other words, the value of seed depends upon the contents of them in oil and meal and other products per ton. And it was with the view of arranging prices to conform with those different fluctuating contents the Government named various prices even in the same state.

Q. I will ask you *of* there was a difference in the price fixed by the Government taking those elements into consideration in Mississippi and Arkansas?

A. Yes, sir.

Q. Do you remember what the difference was?

A. It was a fluctuating difference and might say for this reason, in a great many portions of the alluvial part of Arkansas, they did what we call pull the cotton instead of picking it. In other words, the seed is full of boll hulls and could not compare with the Mississippi Delta seed.

Q. Did that obtain before the time the Government fixed the prices?

142 A. Yes, sir, but the Government recognized those facts and fixed that.

Q. I will ask you if you are now willing, and have been, at all times, to make disposition of this gin property owned by you in Mississippi at its appraised and insurable value? Are you now ready and willing to do so?

A. Yes, sir.

Q. And have been at all times?

A. Yes, sir.

Q. Have you ever been able to get any one to offer you that for it?

A. Never have.

Q. Has any one ever offered you that for it?

A. No, sir.

Q. Did you hear the testimony of Mr. Marshall on yesterday when he was interrogated as to what price he would pay you for it?

A. Yes, sir.

Q. Were you willing, at that time, if he made you an offer of the fair value of the property, to deed it to him or anybody else?

A. Yes, sir.

Q. Was the proposition that was made to you by the Attorney General in the letter that was introduced in evidence by me on yesterday made in good faith?

A. It was. And I here now renew it, and will turn a deed over to this court at any time a purchaser can be found for the property at a reasonable value.

Q. What do you mean when you say reasonable value?

A. I mean values as proposed by these experts. Plus the value of the real estate and railroad side track which we have put out actual cash for.

Q. There was some complaint—I didn't understand the relevancy of it yesterday, the testimony of some one, when seed was

143 selling at Ruleville at $22.00, when the other oil mills were paying $22.00 you raised the price to $25.00? Do you remember that?

A. Yes, sir.

Q. Why did you do that?

A. Because we were owing contracts that we didn't have seed to fill them with, and seed prices were above that price, and I knew the price was going to be advanced in the Delta very quick and I wanted to get my contracts in. So it raised absolutely, seed went up to $40.00 right away.

Q. Why was it you wouldn't be bound by agreements with Captain Perry, Mr. Marshall and the other gentlemen? Why didn't you enter into their schemes and keep the prices down?

A. Always been our policy in the gin and seed buying business to conduct our gins and mills as absolutely independent enterprises, free from any price agreements with anybody. We make our own prices, we don't have agreements and never have had with anybody.

Q. What size mill do you operate?

A. Ten press mill.

Q. Is that a big, little, or average mill?

A. Average mill.

Q. How does it compare with the other mills?

A. One-half the size of the others. Our company is a small corporation. Nobody's got a dollar's interest in it except my family.

Q. Except the members of your own family?

A. Yes, sir.

Q. Have you sold any commodities in the State of Mississippi at less than the cost of production?

A. No, sir.

Q. Have you sold any commodities anywhere in the State
144 of Mississippi at any price different from the price you would sell at another point in the State of Mississippi?

A. No, sir.

Q. Have you sold any commodities in the State of Mississippi at all?

A. No, sir.

Q. Have you sold any commodities in the State of Mississippi since 1908? Except the charge you made for wrapping cotton?

A. We might have sold a carload of mixed—or meal and hulls, if we did, we sold them at the prevailing prices.

Q. Did you sell at any point in the State, at different prices than you would sell at another point?

A. No, sir.

Q. Did you render any services at any point in Mississippi at a different price than what you rendered the same services in Mississippi with a view of destroying competition?

A. No, sir.

Cross-examination.

By Mr. Robinson:

Q. What's the paid-in capital of the Crescent Cotton Oil Company?

A. One hundred and twenty-five thousand dollars.

Q. What would be the total bulk valuation of the Crescent Cotton Oil Company in 1915 and at the present time?

A. I couldn't answer that without I kept the records—approximately about four for one. We have been in business twenty-seven years and we have never paid over ten per cent dividends. We keep our dividends in the business.

Q. Any transfer or sale of it on the market?

A. No sir. I judge from the earnings there would be
145 a considerable difference between the market and book value. I don't think any oil company has got a market value, never heard of one.

Q. In other words, if you sold, you think the book and market value would be merged?

A. No, I think it depends on the management the business gets, and you can't figure market value on the stock.

Q. I believe Mr. Shelton is your manager at Ruleville?

A. Yes sir.

Q. Does he have charge of the gin at Love Station?

A. No, sir.

Q. Is he here?

A. He was yesterday.

Q. When did you establish the gin at Love?

A. We put it there in 1909 or 1910.

Q. That's been in operation continuously since that time?

A. Yes, sir.

Q. What have you been charging for ginning at Love Station?

A. From $1.50 up.

Q. What do you charge at Love Station for ginning and wrapping, or did you charge during 1914?

A. We charged the same as we do at Ruleville.

Q. On each day that you had a ginning and wrapping price at Ruleville, you had exactly the same price at Love?

A. That was our instructions to our managers.

Q. You, of course, are familiar with the intentions of the concern, but what was the actual results, or what were the facts?

A. My recollection is that both carried out instructions and made charges accordingly.

Q. On every day in 1914 and 1915 you charged exactly
146 the same price at Love Station that you did at Ruleville?

A. They were instructed to do so, and I believe they did so. That's my recollection.

Q. Did you maintain the same price at other gin points that you maintained at Love and Ruleville during 1914?

A. I couldn't tell you, sometimes our competitors would cut the price and we had to meet it or raise or lower the price of seed. Those things fluctuate daily.

Q. Then your prices for ginning had no rules?

A. Yes, sir, when we were short of seed, we would raise the price of seed and lower the price of ginning.

Q. In making your prices elsewhere you were governed by con-

ditions there and not by what might be governing the charging in Mississippi?

Q. That might be true, but not generally speaking.

Q. There was independent seed buyers all through the country. People who buy seed and haven't any gins at all?

A. No, sir, there are not.

Q. Do you mean to tell the Court there are not scores and hundreds of independent seed buyers throughout the country?

A. If there are any people of that kind in the Delta, I don't know it—strictly few.

Q. Are there independent seed buyers at Love Station?

A. I don't remember whether there were at that time, or not. There have been.

Q. Did you buy seed in Mississippi when you were at Love Station and Ruleville?

A. We buy them anywhere we can get them.

Q. You stated, as I understood you, that the purpose of the oil mill having those gins was to enable you to secure seed more advantageously?

A. Yes, sir. Enables the mill to pay the purchaser more for the seed.

147 Q. And that you are not able to successfully compete with other oil mills who had gins themselves?

A. I will say we couldn't pay the producer as much for seed as other gins.

Q. If no oil mills were allowed to have gins, other than at their places of domicile, they would be on the same basis in the purchasing of seed?

A. Yes, sir.

Q. I believe you stated there are only five days where you cut the price of ginning down to $1.50.

A. I said only five days at a time. Two or three times the prices were loweered during the season.

Q. That was due to the advance contracts which you had made?

A. It was due to our needing seed and also due to our desire to build up Ruleville and Love and other ginning points.

Q. Since this suit has been filed, you have even found it necessary to make a reduction in price?

A. We have had two big crops since this suit was filed, and the Government has instructed mills that they wanted them to make their money and maintain a higher price for ginning charges. They didn't give them an order, but they requested them to. They didn't want them to make any profit on their seed.

Q. They really and directly had charge of the ginning?

A. They looked on it as one operation from the time the seed cotton drove on the scale until it was put in the mill. They considered it one operation.

Q. You have not found it necessary to cut these prices of ginning since the institution of this suit?

A. No, we had all the ginning we could do.

Q. Notwithstanding the fact that you had all the ginning you

could do, your price was higher with all the ginning than it was at this period you speak of? Than it was when the price
148 was cut?

A. The price level of seed has been so high the last two years that we tried to operate most conservatively, and in every way a very dangerous purchase, and right now it is in a critical state.

Q. The last two years since the institution of this suit you have had larger crops and more ginning to do, have you not?

A. I can't say as to the amount of cotton raised. But it is my recollection we have had more ginning, and as I have explained, the whole level of prices in the past has been so high we have really been afraid to operate at all.

Q. In November, 1915, what did you charge for ginning at Ruleville?

A. $1.50, and paid forty cents a hundred, bagging and ties.

Q. Which made it how much total?

A. Three dollars and a dollar and a half.

Q. When did you get away from the dollar and a half figure?

A. In 1915—total cost for ginning and wrapping. I can look up the date and tell you.

Q. Did you ever charge as small a price as $1.50 after the institution of this suit in 1915?

A. Not that I can recollect.

Q. After the suit was filed, the price for ginning and wrapping was placed back by you to the customary price?

A. We followed the other ginning price.

Q. You never found it necessary to reduce that price down since that time?

A. No, sir, number of the members felt like the level was dangerously high.

Q. At the time you charged a dollar and a half for ginning
149 and wrapping, eighty-two cents of that was for wrapping?

A. Yes, sir.

Q. That include the price for wrapping at Love Station and Ruleville?

A. Cost of wrapping and ginning.

Q. I believe you stated that the cost of ginning, in your direct examination, during the season of 1914, was fifty-seven cents?

A. No, I said the cost of wrapping seventy bales of cotton at eighty-two cents for bagging and ties, was fifty-seven cents.

Q. What did it actually cost you. Your answer is a hypothetical answer or a capacity proposition.

A. That's what we were working on at the time.

Q. Will you tell me the number of bales of cotton ginned by you both at Love Station and at Ruleville during the ginning season of 1915, beginning with the opening of the season and concluding with the day of the institution of this suit, which was the 9th day of October, 1915?

A. I will be glad to furnish you with it. I couldn't give it from memory.

Q. Would you state it is even probable you ginned during that period your possible capacity of seventy-two bales a day?

A. I couldn't say from recollection that we ginned at this time without looking at the records. That's a heavy ginning season, the period of it, I will state that.

Q. Please give me the elements composing that fifty-seven cent charge for ginning?

A. That's labor, fuel, wrapping, manager's salary and so forth.

Q. What's the and so forth?

A. We just put down an item of $30.00; $1.50, Labor; $90.00, coal; $30.00 a week, manager; $57.40 for wrapping, bagging and ties.

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Q. You haven't figured in anything in the cost of ginning for depreciation of your plant?

A. No, sir.

Q. You haven't figured in anything in the cost of ginning for your capital investment have you?

A. No, sir.

Q. What would be a proper charge against the cost?

A. I should think it would be against the season's cost.

Q. And against the cost of any particular day it would take its start?

A. Yes, sir.

Q. What would you say would be a reasonable charge on a gin such as you had at Ruleville and Love Station during the years 1914 and 1915—on the plants you had there?

A. Couldn't say. All depends on the way the manager operates them and what care he takes of them. If properly handled could not be but very little depreciation.

Q. What do your books show that you charge?

A. I will be glad to refer to the records and give them to you.

Q. How did you make a depreciation charge then?

A. I don't know. I will look at the records and supply the information from them.

Q. What was the capital investment at Ruleville during the ginning season of 1914 and 1915, approximately?

A. I will say about twelve thousand dollars.

Q. Of course in saying twelve thousand dollars you have reference only to the ginning side of your plant, you couldn't handle cotton seed side on an investment of twelve thousand?

A. No, sir, cotton seed would require more. Of course the cotton seed were bought on a price pulled ginning lower and the F. O. B. carload creates the difference between those prices. Took up the difference in handling seed, interest and insurance and took up that price——

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Q. Of course, required more capital to handle the seed side, both ways?

A. Yes, sir.

Q. You stated during the ginning season of 1915 there was one time you raised the price to $25.00?

A. Yes, sir.

Q. Which may have been above the prevailing market price at the time because of the peculiar situation you were in in reference to food products?

A. I believe I stated that and also stated the market also immediately advanced to thirty five dollars.

Q. In other words, seed was your primary purpose then?

A. We felt the market was bound to advance.

Q. Why didn't you buy Mr. McLain's seed when he offered them at $25.00?

A. He never offered them to us. I would like to be cited where he did and who he offered them to.

Q. Is Mr. Thompson referred to yesterday in your employ?

A. Mr. Thompson is dead.

Q. Was he in your employ in 1914 and 1915?

A. He worked for us awhile in Ruleville and also in Arkansas, but I don't remember the years, couldn't say. I know he worked for us at both places.

Q. The prices which you placed on the value of your property in 1918 are the prices made to you by this appraiser company?

A. Yes, sir.

Q. I notice that this appraisal takes as its first column what it calls new values?

A. Replacement value.

Q. Which would be the same thing?

A. Yes, sir.

A. As a matter of fact in 1918 there was a great scarcity of steel, etc., wasn't there?

152 A. Yes, sir.

Q. It was a matter of extreme difficulty to get machinery of any kind, notwithstanding the price?

A. No, sir, I don't think that's correct.

Q. Mr. Boyd, will you approximate the respective prices of gin machinery in 1915 and 1916 the second day of May?

A. I couldn't do that.

Q. Would you say the increase was as much as fifty per cent?

A. No, I know it was not that much, but I couldn't answer.

Q. If you can, give the court some general idea in a general way the advance in ginning machinery and things necessary to buy for a gin plant in 1918 as compared to 1915?

A. I don't know, couldn't tell you.

Q. Well, labor and lumber and nails and everything that goes into a gin has constantly been on an advance?

A. I don't know, there is two or three people make gin machinery and they pretty well maintained their prices.

Q. Of course the raw material that went into machinery has constantly advanced?

A. Yes, but they may have had it all way ahead.

Q. The column here, depreciation, tell me what he figured depreciation against, whether against new value or original value or against what he might call the physical value at the time of the appraisal. He has put it in dollars and cents so I cannot tell?

A. I can't tell that.

Q. To illustrate, it reads $1,130.19 depreciation against gin machinery. You can't tell whether he figures that against the new or replacement value for 1918 or whether it was against the original cost and depreciation or whether against the actual value of
153 the plant in May, 1918?

A. No, sir. But I know that his sound value represents the actual value of the particular machinery standing there at the time.

Q. If replaced?

A. No, that's the actual value of that particular machinery.

Q. Value, how much, cost of replacement?

A. No, it's the value of that particular machine.

Q. Value, how much, what it would cost to get another one?

A. No, what it would cost to replace the plant at that time was $13,015.31.

Q. Is the market value on the plant?

A. At that time. That's my explanation.

Q. You don't know what the market value was on October 15th?

A. No, it should have been greater, it was new and less depreciation.

Q. As against that you would have a cheaper price in machinery?

A. Yes, sir, but I don't believe it would offset.

Q. You stated that you were willing to sell the property since you made this offer to the Attorney General in May, 1918, at its appraised value. You are not willing and have never been willing to sell it by leaving it to three disinterested parties?

A. Don't think I made a proposition to do that?

Q. The proposition was made to you?

A. No, sir, it was made on the Ruleville Gin. Didn't include the Love property. I am not willing to sell either one of them without I sell them both, don't see where I could be helped thereby.

Q. So as a matter of fact you wouldn't sell either one of the gins separately?

A. Yes, if sold simultaneously. Sell them right now, to-
154 day. I don't want to sell one and be left with the trouble of this litigation. I am willing to sell them both and make the offer now. I will deed them to anybody you find to take them. Either one or both of them, at the actual fair value.

Q. Would you do it if it were made to you in the manner in which it was made for the Ruleville gin?

A. Sell them both that way, yes sir.

Q. You have been operating these gins at Ruleville and at Love Station since 1916?

A. Yes, sir.

Q. In violation of the order of the Court, too, didn't you?

Objection by Counsel for the Defendant.

A. No, sir.

Mr. Shands (counsel for defendant): He insists that he has not.

Q. You have been operating them?
A. Yes, sir.
Q. Did you ever take any steps prior to May, 1918, to dispose of either one or both of these gins?
A. Yes, sir.
Q. What were they?
A. I tried to sell them. We put a notice up on the Love gin what we would take for it, and put it——
Q. Were you willing to sell the Love gin separately?
A. No, sir, I figured we could sell the Ruleville gin to Hannah and some one else, they were negotiating for it.
Q. Do you remember when you made inquiry of your attorney in Memphis as to whether you should sell the gins, or not?
A. Do I remember the date?
Q. Approximately?
A. I think Mr. Perkins' opinion is the date. It was made before we ever operated the gin.
155 Q. Before the gin season began in 1914?
A. Yes, sir. Before we operated after the passage of the Act.
Q. You took no steps to test the legality of the law?
A. No, sir, I was going on the basis of fifty other mills operating anyhow. Some of them great many more gins than——
Q. You took no legal steps to test the legality of this anti-gin Statute, but relied upon the opinion of an attorney that the Act was unconstitutional.
A. Yes, sir.
Q. And continued operating the gin since 1914 down to the present?
A. Yes, sir, in this present case we stopped operating for a while until the Attorney General's office agreed that we could start operating the gin.
Q. And that agreement is a part of the record?
A. I don't know about that.
Q. Didn't that agreement specifically state——

Objection by Mr. Shands, saying: "The agreement is in writing and is the best evidence."
Court: The agreement speaks for itself.

Q. Now, is the surety bond under the ejectment feature in this case still in force?
A. I don't know about that—I don't think we are paying premiums on it. I think it ran out, but we will be very glad to renew it for you if you want it renewed.
Q. You say your recollection of the visit of Mr. Easyland and these gentlemen is that when they asked you about the purchase of your gin you told them you were not anxious to sell?
A. I know I told them that.
Q. You didn't think—you didn't want to sell it at all. You would have to turn around and build another one.

A. No sir, I told them we needed the seed out of the gin,
156 but I didn't say I wouldn't sell it. My purpose in stating that was I was endeavoring to test their good faith. I knew that if they wanted to buy the gin they would make us a proposition to buy it and turn us over the seed, if they were acting in good faith.

Q. You wouldn't have sold them the Ruleville gin at all?

A. I don't know what I would have done at that time.

Q. You wouldn't do it now?

A. No, sir, I wouldn't do it now, and be left in litigation with all the expense and trouble.

Redirect examination.

By Mr. Shands:

Q. You stated you have been in business life nineteen or twenty years. Did you ever attend a law school?

A. No, sir.

Q. Mr. Robinson asked you if you took any steps to test out the legality of this matter. If you wanted to test out, as a business man, the legality of such a proposition what would be your first step?

A. I would turn it over to our attorney to handle it in any way he might think proper.

Q. Would you, or not, be guided by his advice?

A. Do whatever he says.

Q. You never ran a law office?

Objection by Counsel for the State.

Q. You were asked about any troubles you had with the shortage of seed since the institution of this suit. What has been the condition of the seed market since that time—whether congested or short of seed?

A. The prices of seed have been so high a great many mills have not operated at all, and those that did operate did so with fear and trembling, and they are still trembling. The Government
157 appealed to us on a patriotic basis to handle the seed at the very highest possible price they could be handled at so as to stimulate production of cotton and seed as a food commodity, and they have frankly told us they didn't expect us to make anything but a nominal profit out of it, and it ought to be done on patriotism, and mostly they handled it on that basis, and some of them suffered loss.

Q. Mr. Robinson asked you if you bought any seed from any other place except the seed which you bought from your gins at Ruleville and Love, and you answered you did. I will ask you from whom you bought seed when you bought it from other points in the Delta?

A. We bought it from hundreds of people, shipped us from Delta plantations or any other plantations, gins and public ginners, and buy them all over the whole country. Buy them from anybody that has them for sale.

Q. Do you maintain any seed houses or cotton buyers at any other points in the Delta?

A. No, sir.
Q. There is practically no wagon seed sold in the Delta?
A. It's all practically through the gins.
Q. You buy through the middle men in the Delta section?
A. Yes, sir.
Q. Do you know whether or not the ginners, in preparing plans and specifications for gins, instructed the gins whether or not they should run after a man to sell seed?
A. No, sir.

Objection by Counsel for State.
Overruled; exception.

Q. I now introduce the agreement between George H. Ethridge, Assistant Solicitor for the State, and A. W. Shands, Solicitor for the Crescent Cotton Oil Company numbering the pages 13 and 14, in No. 19481 on the Supreme Court docket, being the State of
158 Mississippi ex rel. versus Crescent Cotton Oil Company et al.
Q. How are you operating the gin? Under what license?
A. License from the United States Government, and under their instructions.
Q. Do you remember when your first license was given you?
A. In the fall of 1917 to ginners.

Defendant Rests.
State Rests.

STATE OF MISSISSIPPI,
County of Washington:

I, A. B. Comings, Official Court Stenographer of the Ninth Chancery Court District of the State of Mississippi, hereby certify that the above and foregoing pages, *is* a true and correct typewritten transcript of my shorthand notes, as taken down by me at the trial of the above cause, and that I have this day filed same with the Clerk of the Chancery Court of Sunflower County, Mississippi and have notified Honorable Frank Robinson, Assistant Attorney General, Jackson, Mississippi, Counsel for the State, and Honorable A. W. Shands, Attorney, Cleveland, Mississippi, Counsel for the defendant, by letter to their respective post-office addresses given above, of the filing of said notes, as required by law so to do.

Dated at Greenville, Mississippi, this the 12th day of May, A. D. 1919.

A. B. COMINGS,
Official Court Stenographer.

159 *Motion to Amend Original Bill.*

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

Now comes the State of Mississippi by Attorney and moves the Court to be allowed to amend the prayer of the original bill by inserting after the words "relief prayed" and before the words "that the Court" the following: "And for the penalties imposed by Chapter 145 Code 1906, and the amendments thereto;" Complainants would show that the Defendants were advised of this amendment several months ago.

FRANK ROBERSON,
Solicitor for Complainant.

Filed March 7th, 1919. John W. Johnson, Clerk. Filed this March 7th, E. N. Thomas, Chancellor.

Order Allowing Amendment to Original Bill.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Attorney General,

vs.

CRESCENT COTTON OIL COMPANY et al.

This day this cause came on for hearing in vacation, and counsel for the defendants agreeing thereto, it is ordered by the Court that the motion of the Complainant to amend the prayer of the original bill be and the same is hereby allowed, and said amendment shall be inserted after the words "relief prayed" and before the words "that the court" and shall read as follows: "and for the
160 penalties imposed by Chapter 145 Code 1906, and the amendments thereto."

Ordered, adjudged and decreed, this the 7th day of March, 1919.

E. N. THOMAS,
Chancellor.

Filed March 7th, 1919. John W. Johnson, Clerk. Filed March 7th, 1919. —— ——, Chancellor.

Notice to Stenographer to Prepare Notes.

In the Chancery Court of Sunflower County, Mississippi.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS

vs.

CRESCENT COTTON OIL COMPANY.

To A. B. Comings, Official Court Stenographer:

You will take notice that the Defendant Crescent Cotton Oil Company, desires to appeal from the decree of the Chancery Court in this matter.

You will therefore please extend your notes of testimony taken on Friday and Saturday, March 7th and 8th, before Honorable E. N. Thomas, Chancellor, at Greenville, Mississippi, and file same in the office of the Chancery Clerk at Indianola, as required by law.

A. W. SHANDS,
Solicitor for Defendant.

I hereby certify that I have this day, mailed, postage prepaid, a copy of the above notice to A. B. Comins, Greenville, Mississippi, and to the Chancery Clerk of Sunflower County, at Indianola, Mississippi, with the request to the said Clerk to file among the papers in his office.

This the 24th day of March, 1919.

A. W. SHANDS,
Solicitor for Defendant.

Filed March 25th, 1919. [Seal.] John W. Johnson, Clerk, by L. T. Chandler, D. C.

161 *Decree.*

In the Chancery Court of Sunflower County, Miss.

No. 2721.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS

vs.

CRESCENT COTTON OIL COMPANY et al.

This day came on for final hearing the cause of State of Mississippi ex Rel. Ross A. Collins, Attorney General, v. Crescent Cotton Oil Company and C. E. Shelton, Defendants, in vacation, the cause having heretofore been taken under advisement to be decided

in vacation, and upon agreement of Counsel. Said cause came on for hearing on the Original Bill as amended, amended answer, Service of Process, and Proof, and both Complainant and Defendants being present, the Court after hearing the testimony introduced by both the Complainant and the Defendants and after having duly considered the same, finds that the Complainant is entitled to the relief prayed for.

The court is of the opinion that the Defendant, the Crescent Cotton Oil Company, is guilty of a violation of the anti gin statute being Chapter 162, Laws of 1914, and is also guilty of a violation of the anti trust laws of the State of Mississippi.

It is further ordered by the Court that the Defendant, the Crescent Cotton Oil Company, be fined in a penalty in the sum of one thousand and nine hundred ($1,900.00) dollars and the same is hereby imposed for a violation of Chapter 162 Laws of 1914; and that a fine and penalty of one hundred ($100.00) dollars be and the same is hereby imposed for a violation of anti trust statutes. It is further ordered by the Court that the said Crescent Cotton Oil Company is perpetually enjoined from operating Cotton Gins within
162 the State of Mississippi, and the said Crescent Cotton Oil Company shall forfeit its right to do business in the State of Mississippi. And it is further ordered by the Court that the attachment of the property and effects of the Crescent Cotton Oil Company sued out *and* is sustained.

It is further ordered by the Court that the Defendant, the Crescent Cotton Oil Company, be and is hereby given ninety days from the date of this decree within which to dispose of the two gins owned and operated by it at Ruleville, and to Love Station in the State of Mississippi, and if, at the expiration of the said ninety days, the Crescent Cotton Oil Company shall not have disposed of the said gins, it is further ordered that Mr. J. W. Johnson, Clerk of the Chancery Court of Sunflower County, shall be and is hereby named as a receiver of the two gins of the Crescent Cotton Oil Company, Defendant, operated at Ruleville, and at Love Station in the State of Mississippi. Said receiver shall enter into a surety bond in the sum of five thousand ($5,000.00) dollars to be approved by this court. Said receiver shall advertise said gins for thirty days to be sold at public outcry to the highest bidder, for cash, and that from the proceeds of said sale the said receiver shall pay the costs of this litigation and the penalties imposed by the Court, and after discharging these obligations, shall pay over the remainder of the proceeds of said sale, if any, to the Crescent Cotton Oil Company, Defendant.

It is further ordered by the Court that the said Crescent Cotton Oil Company be and the same is hereby perpetually enjoined from doing an intrastate or local business in the State of Mississippi, and its right to do such intrastate or local business in this state
163 be and the same is hereby forfeited and said defendant is perpetually enjoined from a violation of the anti trust statutes of the State of Mississippi. It is further ordered by the Court that if the proceeds of the sale of the two gins aforesaid shall fail to

pay the costs of the litigation and penalties imposed, that execution may issue therefor.

Ordered, Adjudged and decreed this the 8th day of March, 1919.

E. N. THOMAS,
Chancellor.

Filed May 1st, 1919. John W. Johnson, Clerk, by L. T. Chandler, D. C.

Petition for Writ of Supersedeas.

No. 2721.

THE CRESCENT COTTON OIL COMPANY

vs.

THE STATE OF MISSISSIPPI ex Rel.

To the Honorable Sydney Smith, Chief Justice of the State of Miss.:

Your petitioner, the Crescent Cotton Oil Company, would respectfully show that on the 9th day of October, 1915, Ross A. Collins, Attorney General of the State of Mississippi, filed a Bill in the Chancery Court of Sunflower County against your petitioner charging it with the violation of Chapter 162, of the Laws of 1894, in that it was operating a gin in the State of Mississippi in violation of the provisions of said Act, and further claiming that it was acting in violation of clauses M, N, and O, of Chapter 119, of the Laws of 1908, in relation to Trust- and combines. The bill prayed for a temporary injunction which was granted, and an attachment issued against the real and personal estate of your petitioner under the provis-
164 ions of Chapter 162, of the Act of 1914.

Certain pleas and proceedings were had in said cause which resulted in a decree of the Chancery Court rendered on the 15th day of May, 1916, dissolving the injunction and attachment and dismissing the bill.

From this decree an appeal was taken by the State of Mississippi, to the Supreme Court, and the cause was submitted to the Supreme Court and the judgment rendered by the Supreme Court on January 14th, 1918, reversing the decree of the Chancery Court and remanding the cause. The case is numbered 19481 on the Docket of the Supreme Court and the decision of the Court is reported in 77 S. Rep. 185.

The contention of your petitioner on the first hearing was among others, *was* that it was a foreign corporation, doing business in the State of Mississippi, under the provisions of the laws of the State of Mississippi, having fully complied therewith, and as to it, the application of the Act of 1914, was violative of the Constitution of the United States, in that it was depriving your petitioner of the equal protection of the law and depriving it of its property without due process of law. Upon the remanding of the cause the petitioner

amended its answer in such material particulars, copy of said amendments are filed herewith and marked "Exhibits A & B."

By the amendment "Exhibit A" your petitioner sets up the fact that long prior to the passage of the Act of 1904, and continuing up to the time of the bringing of the suit, it had been engaged in operating an oil mill in the State of Tennessee, and that its sole business in the State of Mississippi was that of purchasing cotton seed to be shipped from the State of Mississippi to the State of Tennessee, and as such was Interstate Commerce, and that in the prosecuting
165 of its business of Interstate Commerce it became necessary for it to operate a gin for the purpose of acquiring cotton seed to be shipped in Interstate Commerce, that it was not engaged otherwise in any business in the State of Mississippi, and that conditions had arisen which rendered it necessary, as essential incidents to its business of Interstate Commerce, to operate said gin and to deprive it of the right to operate said gin would be to greatly burden and destroy its business of Interstate Commerce.

Amendment "Exhibit B" sets up the value of its property acquired and held in the State of Mississippi, and necessary to the prosecution of its business, and that the said property could not be disposed of without entailing upon the petitioner a very great loss and would be depriving the petitioner of its property without due process of law.

On the second hearing the case was heard in vacation on the — day of ——, 1919, and on pleading and oral testimony taken before the Chancellor, a copy of the Stenographer's notes is filed herewith as "Exhibit C." On this hearing the Chancellor rendered a final decree holding that your petitioner has been guilty of the violation of said Act of 1914, and also the Anti Trust Law of Mississippi, and imposed upon your petitioner, a fine and penalty in the sum of $1,900.00 for the violation of the Act of 1914, and a penalty of $100.00 for the alleged violation of the Anti Trust Law and your petitioner was perpetually enjoined from operating a gin in the State of Mississippi and its right to do business in the State of Mississippi was forfeited, and the attachment of its property and effects was sustained and your petitioner given ninety days within which to dispose of the two gins owned by it in the State of Mississippi, and it was
166 further ordered that if the said property was not disposed of within that time, a receiver should take possession of said property and sell same at public outcry after thirty days' notice, and apply the proceeds of said sale, to the payment of the cost, fines and penalties imposed by said decree.

Your petitioner prayed an appeal with Supersedeas to the Supreme Court of the State of Mississippi, but the supersedeas was denied. A copy of said decree is filed herewith and marked "Exhibit D" to be taken as part of this petition.

Your petitioner would show that it is its purpose in good faith to prosecute its appeal, and that the effect of denying it a writ of supersedeas would be not only to defeat the purpose for which said appeal is taken, but would subject your petitioner to irreparable injury. Your petitioner would show that it is ready to give any reasonable

bond for the protection of the State in the event that its appeal should be without effect, that its property in the State of Mississippi is of such character that it cannot be removed, consisting as it does of real estate and other fixtures of value far in excess of the fines and penalties imposed or of any injury or damage which could be done by granting the said writ. Your petitioner therefore prays that the writ of supersedeas may be awarded to operate until the rights of the parties may be fully determined upon appeal, and your petitioner would ever pray.

J. B. HARRIS,
For Petitioner.

167 *Supersedeas Bond.*

STATE OF MISSISSIPPI,
Sunflower County:

In the Chancery Court.

No. 2721.

THE STATE OF MISSISSIPPI ex Rel.

vs.

THE CRESCENT COTTON OIL COMPANY.

Know all men by these presents:

That we, The Crescent Cotton Oil Company, of Memphis, Tenn., and United States Fidelity and Guaranty Co., of Baltimore, Md., as Surety, are held and firmly bound unto the State of Mississippi, in the penal sum of Five Thousand Dollars for the payment of which well and truly to be made, we jointly and several- bind ourselves, successors and assigns firmly by these presents.

The conditions of the above obligations is such that whereas, on the 8th day of March, 1919, in the Chancery Court of Sunflower County, in a certain cause wherein the State of Mississippi was Complainant and the said Crescent Cotton Oil Company was Defendant, a decree was rendered against the Defendant and in favor of the State of Mississippi, imposing certain fines, penalties and forfeitures upon said Defendants, the Crescent Cotton Oil Company and the said Crescent Cotton Oil Company feeling aggrieved by said decree has prayed and obtained an appeal to the Supreme Court of the State of Mississippi, said appeal to operate as a supersedeas and which appeal is perfected by this bond. Now if the said Crescent Cotton Oil Company shall prosecute its appeal with effect, and if said decree is affirmed shall pay all costs and abide by and perform such decree as may be finally rendered against it, then this obligation is to be void, otherwise to remain in full force and effect.

168 In witness whereof, the above bound obligors have hereunto affixed their signatures and seals this the 24th day of May, 1919.

CRESCENT COTTON OIL COMPANY,
[SEAL.] By A. BOYD,
Sec. & Treas.
UNITED STATES FIDELITY & GUARANTY COMPANY,
By T. M. STERM,
Agent & Att'y in Fact.

Countersigned:
ELBERT JOHNSON,
Local Agent and Attorney in Fact.

The foregoing bond is approved this the 27th day of May, 1919.

JOHN W. JOHNSON,
Chancery Clerk,
[SEAL.] By L. T. CHANDLER, *D. C.*

Decree Granting Writ of Supersedeas.

No. 2721.

STATE OF MISSISSIPPI ex Rel.

vs.

CRESCENT COTTON OIL COMPANY.

To the Clerk of the Chancery Court of Sunflower County, Mississippi:

An application having been referred to me by the Defendant in the above styled cause for a writ of Supersedeas from the decree of the Chancellor rendered in this cause on the 8th day of March, 1919, in vacation, imposing upon the said Defendant certain fines and penalties for the alleged violation of the statute of the State of Mississippi, mentioned in said Decree, and also forfeiting the right of the Defendant to do business in the State of Mississippi, and directing and ordering the sale of the Defendant's gins within ninety days from
169 the date of said decree and directing an attachment to issue against the said Defendant's property and effects and perpetually enjoining said Defendant from operating a gin in the State of Mississippi, and also for appointment of receiver, and the matter having been heard upon the petition and exhibits thereto and the argument of counsel representing respective parties, and it appearing that a supersedeas should be allowed, you are hereby directed to send up an appeal in this cause, with a supersedeas from said decree upon the defendant entering into a bond payable to the State of Mississippi in the sum of $5,000.00 *Dollars,* conditioned that the

said Defendant will satisfy and comply with the decree in the Court below and also such final judgment as may be made in the cause and all costs in the event that the decree complained of in the Court below be affirmed.

Ordered this the 21st day of May, 1919.

SYDNEY SMITH,
Chief Justice of the State of Mississippi.

Filed May 24th, 1919. John W. Johnson, Chancery Clerk, by L. T. Chandler, D. C.

STATE OF MISSISSIPPI,
County of Sunflower:

I, John W. Johnson, Clerk of the Chancery Court within and for the above mentioned County and State, hereby certify that the foregoing 205 pages contain a full, true and correct copy of the court papers and proceedings as fully and completely as the same appear of record in this office in the fil- of papers in the Cause of State of Mississippi ex Rel. Ross A. Collins, Attorney General, v. Crescent Cotton Oil Company. 2721.

Witness my signature and official seal this the 12th day of August, A. D., 1919.

JOHN W. JOHNSON,
Clerk.

STATE OF MISSISSIPPI:

In the Supreme Court, October Term, 1919.

CRESCENT OIL MILL

vs.

STATE OF MISSISSIPPI ex Rel.

Appeal from the Chancery Court of Sunflower County.

Assignment of Errors.

Comes the appellant by Attorney and for error in the court below assigns the following:

1. The court erred in rendering the decree against the appellant.

2. The court erred in rendering the decree forfeiting the right of the appellant to do business in the State of Mississippi.

3. The court erred in rendering the decree subjecting the defendant to fine and directing the sale of its gin and denying the appellant the right to operate a gin in the State of Mississippi for the alleged violation of Chapter 162 of the Act of 1914.

4. The court erred in holding that the appellant was guilty of the violation of the anti trust law, Chapter 119 of the Act of 1908.

5. The court erred in denying the right of the appellant to do a local business in the State of Mississippi.

171 & 172 6. The court erred in rendering any decree whatsoever against the appellant.

7. For other errors apparent.

A. W. SHANDS,
J. B. HARRIS,
Counsel for Appellant.

I hereby certify that a copy of this assignment of errors was mailed to Ross A. Collins, Sept. 6th, 1919.

J. B. HARRIS.

Endorsed: Filed Sept. 8th, 1919. Geo. C. Myers, Clerk.

October Term, 1919, Monday, January 12th, 1919.

No. 20890.

CRESCENT COTTON OIL CO.

vs.

THE STATE ex Rel.

Argued orally by Mr. J. B. Harris for Appellant and Ross A. Collins, Attorney General for State, and submitted on briefs by A. W. Shands and J. B. Harris for appellant and Attorney General, and Frank Robertson for State.

Minute Book "U," p. 564.

October Term, 1919, Monday, February 9th, 1920.

No. 20890.

CRESCENT COTTON OIL CO.

vs.

STATE OF MISSISSIPPI ex Rel. ROSS A. COLLINS, Att'y Gen'l.

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Sunflower County, and this court having sufficiently examined and considered the same and being of opinion that there is partial error therein, doth order, adjudge and decree that so much of said decree as
173 assesses a fine of One Hundred Dollars for violation of the

Anti Trust Statutes be and the same is hereby reversed and the fine of One Hundred Dollars annulled and set aside, and that said decree in all other things be and the same is hereby affirmed, and that appellee do have and recover of appellant and the U. S. Fidelity & Guaranty Company, surety in the supersedeas bond, the costs of this cause in this court and in the Court below, to be taxed, &c.

Minute Book "U," p. 581.

Opinion.

In the Supreme Court of Mississippi.

No. 20890.

(5986.)

CRESCENT COTTON OIL COMPANY

vs.

STATE OF MISSISSIPPI ex Rel.

In Banc. Sykes, J.

This is the second appearance of this case in this court. Upon the former appeal we held that Chapter 162 of the Laws of 1914, Section 4750, et seq. Hemingway's Code, was constitutional. This case is reported in 116 Miss., 398, and reference is here made to that report for a more complete history of the case. Upon the remand of the case to the chancery court the Oil Company upon motion was allowed to make the following amendment to its answer:

"Respondent, Crescent Cotton Oil Company, would show that it is engaged, and had been for a long time prior to the passage of the Act of 1914, mentioned in the said bill, engaged in the operation of a cotton oil mill in the State of Tennessee, and in order to procure seed to run the said oil mill, was during all of said time engaged in the buying of cotton seed in the State of Mississippi,
174 and that all seed bought in the State of Mississippi, were shipped in interstate commerce from the State of Mississippi into the State of Tennessee.

"This respondent would further show that conditions arose which rendered it impossible for a person not operating a gin to compete successfully with a person owning a gin in the purchase of cotton seed.

"Respondents would show that in order to stay in the market and continue to buy seed at Ruleville, to be so shipped in such interstate commerce, it was necessary for it to acquire and operate a gin plant, which it did in 1910, and has continuously operated same since that time, and that the ownership and operation of said gin was a means and instrumentality made use of by this respondent in carrying on its business of cotton seed buyer and interstate ship-

per, of cotton seed, and that the operation of said gin was an incident to the business of cotton seed buyer, and was a necessary and essential incident.

"Respondent would further show that to deprive it of the right to own and operate its gin plant will greatly burden and destroy its business of interstate commerce, in the shipment of cotton seed from the State of Mississippi, into the State of Tennessee, and would be in conflict with the commerce clause of the Constitution of the United States, being Section 3, of Article VIII. Respondent would further show that it is now engaged in no business in the State of Mississippi, and was not at the time of the passage of this act or the filing of this suit, or at any other time prior thereto, except such as is necessary to acquire cotton seed and ship them in interstate commerce and incident to such business of interstate shipper of cotton seed."

The testimony in the case for the complainant showed that at various and sundry times when the other cotton gins at
175 Ruleville would not agree to sell to the defendant oil mill a certain amount of seed bought by them, the defendant would put down the price of ginning below its actual cost for the purpose of destroying competition in ginning. The testimony also showed that the ginner has a great advantage in the buying of cotton seed over one who doesn't operate a gin. That at Ruleville it is almost the invaroable custom of the cotton owner who wishes to sell his seed to sell it to the one who does his ginning. From the testimony it appears that the ginning business of the appellant company at Ruleville is operated in this manner. The owner of the cotton in the seed brings his cotton to the gin and if he wishes to sell the seed to the gin the cotton is then ginned and the seed blown into the seed house of the defendant. The lint cotton is then baled and gotten by its owner. It seems from this testimony that the defendant company actually negotiated for the purchase of the seed before the cotton was ginned. If the owner of the cotton does not sell his seed to the gin the seed are not blown into the seed house of the gin, but are reloaded on the wagon of the owner. The record does not show what proportion of the seed of cotton ginned by the defendant company is thus purchased by it. One who operates a cotton gin is thereby enabled to buy a larger quantity of seed, and at a more reasonable price than he would did he not operate a gin. In other words, the advantages in operating a gin are that the ginner is thereby given a better opportunity to buy seed from the person who gins with him, and also probably at a lower price, than if he did not own and operate the gin. The manager of the defendant Oil Company testified that in order for him to buy as much seed as he needed in his own mill business and at
176 an advantageous price, it was necessary for him to operate cotton gins. He also testified that his mill operated eleven different cotton gins, two being in Mississippi, and the other probably in Arkansas and Tennessee. The testimony for the complainant in the case further shows that the seed bought by the other gins at Ruleville were sold to other oil mills. That it was usually

customary for them to make arrangements with some oil mill to sell the seed bought by them to these mills for a certain profit. The testimony for the defendant also shows that it made money from its ginning operations at Ruleville. From all the testimony in the case, we think, it proves that an oil mill in operating a gin is enabled thereby toc purchase a larger volume of cotton seed at a lower price than is possible by being forced to go into the open market for cotton seed, or having to buy these seed from other gins.

The uncontradicted testimony in the case shows that all of the seed bought by the defendant company from its ginning customers were bought for the purpose of shipment and were actually shipped to its oil mill in Memphis, Tennessee. To use the phrase of the general manager of the defendant company, this gin was used as a feeder for its oil mill in Memphis, Tennessee, meaning that its principal object and purpose in running the gin was to enable it advantageously to purchase these seed from its customers for shipment to its oil mill in Memphis.

The decree of the Chancery Court found that the Crescent Cotton Oil Company was guilty of violating the above law, and also of violating the anti-trust statute (Chapter 119, Laws of 1908, Section 3283, Hemingway's Code). The Oil Company in this decree
177 is perpetually enjoined from operating a cotton gin in Mississippi and was given ninety days within which to dispose of its two gins in this state, in default of which a receiver is to take charge of these gins and sell them at public auction to the highest bidder in thirty days. The defendant Oil Company is also perpetually enjoined from doing an intrastate business in the State of Mississippi, and is enjoined from violating the anti-trust law. For the violation of Chapter 162c of the Laws of 1914, Sections 4754-6, Hemingway's Code, the defendant Company was fined $1,900.00, and for a violation of the anti-trust law it was fined $100.00. The decree also provides that the defendant Oil Company shall forfeit its right to do business in the State of Mississippi. From this decree this appeal was prosecuted.

It is the contention of the appellant, and ably presented in brief and oral argument, that the question now before the court is different from that on former appeal. That the testimony here shows that the defendant Oil Company was engaged in interstate commerce, namely, in shipping cotton seed from Mississippi to its oil mill in Tennessee. That as an incident to this interstate commerce and in order to obtain what seed it needed at a reasonable price, it was necessary for it to operate the two cotton gins in Mississippi. That the operation of these two gins is but an incident of its interstate business, namely, that of shipping cotton seed from Mississippi to Tennessee. Therefore, that it is a burden on, and an interference with, interstate commerce to prohibit this mill under these circumstances from operating gins in Mississippi. That the gin is but an incident and not the dominant object or business of the defendant company. That in this case the interstate commerce is the para-

mount and dominant business, and the operation of the gin
178 a mere incident in aiding and assisting the carrying on of the interstate business. To sustain this contention the learned counsel for appellant rely upon the cases of Pullman Palace Car Co. vs. Kansas, 216 U. S. 65, 54 L. ed. 385; Western Union Tel. Co. vs. Kansas, 216 U. S. 1, 54 L. ed. 355; Ludwig vs. Western Union Tel. Co., 216 U. S., 146, 54 L. ed. 423; Harrison vs. Railroad Co., 232, U. S., 318, 58 L. Ed. 621.

In the first two cases above cited the statute of the State of Kansas was involved, which attempted to tax as a charter fee a given per cent of the entire authorized capital stock of a foreign corporation as a condition of its continuing to do a local business in the State. This was held to be a burden and a tax on the company's interstate business and on its property located or used outside of the State. The Ludwig case is quite similar involving a statute of the State of Arkansas.

The Harrison case holds that the right of a foreign interstate railway company to remove a case to the Federal Court under proper circumstances cannot be prohibited by a State statute.

None of the points actually decided in any of these cases is authority or applicable to the point before the court. The question of what is or what is not a burden on, or an interference with, interstate commerce is ably discussed in these opinions, especially in the case of Western Union Tel. Co. vs. Kansas, supra. In that case Mr. Justice Harlan reviews at length the decisions of the supreme court of the United States bearing upon this question. It is to be noted, however, that every case above cited is one in which the principal business of the corporation was interstate business, though these corporations also did an intra-state business. In the case at bar it
179 is admitted by counsel for appellant that the ginning of cotton is not interstate commerce. This is undoubtedly true under all of the authorities. But counsel contends that the ginning and the interstate commerce are so interwoven and intermingled that they are inseparably connected in this case because of the fact that appellant was engaged in interstate commerce in shipping the cotton seed from Mississippi to Tennessee. In this case, however, after a price had been agreed upon for the cotton seed and the seed thereby sold to the defendant company it was necessary for the seed to be separated from the cotton by the process of ginning. In this ginning process the seed of the appellant were blown into his seed house. After which time, either immediately or at a later date, the seed were shipped by appellant in interstate commerce from Mississippi to Tennessee. The buying of the cotton seed was not interstate commerce, the ginning of the cotton was not interstate commerce, and it only became interstate commerce after it had been tendered to and accepted by the interstate carrier for transportation from Mississippi to Tennessee. It makes no difference what the purpose of the appellant company was in erecting and operating its ginning plants at these two points in Mississippi. By their operation it was doing what is well recognized as a business, namely, the ginning of cotton within the State of Mississippi. It is well settled by all of the authorities

that the State has a right to regulate its internal affairs and a ginning plant operated in Mississippi is of this classification. In one sense of the word ginning *if* manufacturing seed cotton into lint cotton and cotton seed.

The purchase of the cotton seed is a separate and distinct transaction from the ginning of the seed, and the ginning of the
180 seed is a separate and distinct transaction from the shipping of these seed from Mississippi to Tennessee. In other words, before these seed became a part of interstate commerce, or before this defendant company becomes engaged in interstate commerce in this transaction, it has to do three things, namely, purchase the seed, gin the cotton, and then deliver these seed to a carrier for interstate shipment. The fact that the defendant company had purchased the seed from the owner before the ginning of the cotton and was the owner of the seed at the time of the ginning and intended at some future time to ship these seed from Mississippi to Tennessee does not make the ginning of this cotton interstate commerce.

In the case of Kidd vs. Pearson, 128 U. S. 1, 32 L. Ed. 346, the Supreme Court of the United States through Mr. Justice Lamar, in holding a law of the State of Iowa authorizing the abating as a nuisance of a distillery used for the unlawful manufacture and sale of intoxicating liquors, not unconstitutional as an attempted regulation of interstate commerce, in part says:

"We think the construction contended for by plaintiff in error would extend the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its objects and scope. The language of the grant is: 'Congress shall have power to regulate commerce with foreign Nations and among the several states,' Etc. These words are used without any veiled or obscure signification. 'As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said.' (Gibbons vs. Ogden, 22 U. S., 9, 6 L. Ed. 23.)

181 "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw material into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term as given by this court in County of Mobile vs. Kimball, 102 U. S., 691, 702, 26 L. ed. 238, 241, is as follows: 'Commerce with foreign Nations and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manu-

factures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago?

The power being vested in Congress and denied to the States,
182 it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are, and must be, local in all the details of their successful management. * * *

"It is true that, notwithstanding its purposes and ends are restricted to the jurisdictional limits of the State of Iowa, and apply to transaction wholly internal and between its own citizens, its effects may reach beyond the State by lessening the amount of intoxicating liquors exported. But it does not follow that, because the products of a domestic manufacture may ultimately become the subjects of interstate commerce, at the pleasure of the manufacturer, the legislation of the State respecting such manufacture is an attempted exercise of the power to regulate commerce exclusively conferred upon Congress. * * *

" 'As has been often said, legislation (By a State) may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution,' unless, under the guise of police regulations, it imposes a direct burden upon interstate commerce, or directly interferes with its freedom.' (Hall v. De Cuir, 95 U. S., 485, 24 L. ed., 547), citing authorities. * * * The manufacture of intoxicating liquors in a state is none the less a business within that State because the manufacturer intends, at his convenience, to export such liquors to foreign countries or to other States. * * *

" 'Do the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for
183 solution. * * * There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed

to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for transportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State; * * * that such goods do not cease to be a part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey.' (Coe v. Errol, 116 U. S., 517, 29 L. ed. 715.)"

Another case directly in point is that of Hammer vs. Dagenhart, 247 U. S., 251, 62 L. ed., 1101. In this case the court held that Congress did not have authority under the commerce clause of the Constitution to pass a law to control interstate shipments of child-made goods. In the course of his opinion Mr. Justice Day
184 said:

"The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the states, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are themselves harmless. * * * When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the commerce power. * * * "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation. 'When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State.' Mr. Justice Jackson in Re Greene, 52 Fed. 113." Citing authorities.

The above two authorities from which we have so liberally quoted, and the authorities cited by them, sustain the proposition that it makes no difference for what purpose the appellant operated this gin or what was his intention with reference to the cotton seed he bought from the owner, that the ginning *if* an entirely separate and independent and local business and is not interstate commerce,
185 and this law which prohibits this mill from owning the gin is in no sense a burden on interstate commerce.

The testimony for the complainant in the case shows that the appellant attempted to destroy competition by putting down the price of ginning below its actual cost. This was not a violation of either sections (*m*), (*n*), or (*o*) of the anti-trust law as alleged. That

part of the decree so finding is therefore reversed and the fine of $100.00 annulled and set aside.

The remainder of the decree is affirmed.

Affirmed in part and reversed in part.

Ethridge, J., having been of counsel, took no part in the decision of this case.

Endorsed: Filed February 9, 1920. W. J. Buck, Clerk, W. J. Buck, D. C.

185¼ STATE OF MISSISSIPPI,
Hinds County:

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State, which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing are full, true and correct copies of all the papers, each and all of them constituting the record in the said Supreme Court of the State of Mississippi in the case of Crescent Cotton Oil Company vs. State of Mississippi, Ex Rel., No. 20890 on the docket of said court all of which are now on file in my office, and taken together constitute the record in said cause.

Given under my hand with the seal of said court affixed at office in the City of Jackson, Mississippi, this the 8th day of April, A. D., 1920.

[Seal Supreme Court, State of Mississippi.]

W. J. BUCK,
Clerk Supreme Court of Mississippi.

185½ I, W. J. Buck, Clerk of the Supreme Court of The State of Mississippi certify that the following is a correct statement of costs as itemized below:

Filing Petition for Writ of Error, Assignment of Errors in U. S. Supreme Court, Order Granting Writ of Error, Writ of Error Bond, supersedeas, Citation	$1.25
Certificate to transcript	.50
65,500 words at 15 cts. per hundred	98.25
Total	$100.00

Given under my hand and the Seal of the Supreme Court of Mississippi at offices this 15th day of April, 1920.

[Seal Supreme Court, State of Mississippi.]

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

186 In the Supreme Court of the State of Mississippi, October Term, 1919.

THE CRESCENT COTTON OIL CO.

vs.

THE STATE OF MISSISSIPPI ex Rel.

To the Honorable Chief Justice of the Supreme Court of the State of Mississippi:

The petition of the Crescent Cotton Oil Company, a corporation of the State of Tennessee, respectfully show- that the Chancery Court of Sunflower County in the State of Mississippi, wherein was pending a suit in which the State of Mississippi was compli-ant against your petitioner charging it with the violation of an act of the Mississippi Legislature being chapter 162 of the act of 1914 entitled "An act to prohibit cotton seed oil companies and cotton compress companies, and other persons associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton products and by products and compresses from owning, buying, leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties, and for other purposes", rendered its final decree in said cause, adjudging that your petitioner was guilty of violating *of* said act and imposed upon your petitioner a fine of $1,900.00 and further ordered your petitioner to depose of its cotton gin and pay said fine within six days from the day of the rendition of said decree, and further decreeing that your petitioner be perpetually enjoined from operating a cotton gin in the State of Mississippi and forfeiting its right to do business in *that* State of Mississippi and perpetually enjoining it from doing any local business in the State of Mississippi. From said decree your petitioner, the Crescent Cotton Oil Co. prayed and obtained and appeal to the Supreme Coure of the State of Mississippi and that on the 9th *the* day of February, 1920, the Supreme Court of the State of Mississippi,

187 which was and is the highest court of the State in which a decision in said suit can be had, rendered its judgment affirming said judgment of the Chancery Court of Sunflower County, Mississippi.

Your Petitioner claims the right to remove the said judgment of the Supreme Court of Mississippi to the Supreme Court of the United States by the writ of error under a provision of Section 237 of the Congress of March 3rd, 1911, entitled "An Act to Codify, Revise and Amend the Laws Relating to Judiciary", as amended, because in and by said suit and the judgment and decree rendered therein, there was drawn in question the validity of a statute and an authority exercised under the laws of the State of Mississippi, on the ground of their being repugnant to the constitution of the United States and the decision of the said Supreme Court of the State of Mississippi was in favor of their validity, and wherein

the said Crescent Cotton Oil Company also claimed rights and immunities under the Constitution of the United States, and the judgement and decree of the Supreme Court of Mississippi was against such rights and immunities.

Your Petitioner the said Crescent Cotton Oil Company by its Attorney claimed and contented in the said Chancery Court of Sunflower County, Mississippi, when said cause was there pending and in said Supreme Court of the State of Mississippi when cause was therein pending.

1. That the said Act of the Mississippi Legislature above refer-ed to by its operation and affect, in that it deprived your petitioner — the right to operate a cotton gin in the State of Mississippi and unposed heavy penal-ied upon your petitioner — so doing, would be to deprive your Petitioner of its property without due process of the law, in violation of the Fourteenth Amendment of the Constitution of the United States. In and by the said decrees and Judgements both of the said Chancery Court of Sunflower County, Mississippi, and in the Supreme Court of Mississippi its said contention was overruled and its said claims denied.

2. That the said Act of the Mississippi Legislature in that it allows other corporations not interested in Cotton Oil Mills and cotton seed products, and individual- who were so interested in Cotton Oil Mills and cotton seed products to operate cotton gins, was dis-
188 criminatary and denied to *in* the petitioner and equal protection of the law and deprived — of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. In and — said decrees and judgment both of the said Chancery Court of Sunflower County, Mississippi, and of the Supreme Court of the State of Mississippi, its said contention was overruled and its claims denied.

3. That your Petitioner the said Crescent Cotton Oil Company being a foreign corporation and having intered the State if Mississippi, by its permission and invested its capital, in cotton gins and other property appurtenant thereto long before the passage of the said Act of the Mississippi Legislature, to expell your Petitioner and forfeit its right to do business in the State of Mississippi because it is a foreign corporation, will be — deprive your Petitioner of its property without due process of the law and deny to it the equal protection of the law, in violation of the Fourteenth Amendment of the Const-tution of the United States. In and — said decrees and judgment both of the said Chancery Court of Sunflower County, Mississippi — its contention was overruled and its claims denied;

4. That your Petitioner *to* said Crescent Cotton Oil Company having entered the State of Mississippi for the sole purpose of acquiring cotton seed to be shipped in Interstate Commerce to its Oil Mill in the State of Tennessee, to deny your Petitioner *of* right to operate a cotton gin in connection with and in aid of, and as an adjunct to its said interstate commerce, will be to regulate, burden and destroy its interstate commerce *of* violation of Section (8), of Article (1),

of Constitution of the United States. In and — said decree and judgements both of the said *Sunflower County and of the said* Chancery Court of Sunflower County and of the Supreme Court of the State of Mississippi, its said contention was overruled and its said claims denied;

All of which appears of record in said proceedings in said cause which is hereby, su-mitted.

Wherefor- your Petitioner prays for the allowance of writ of error returnable to the Supreme Court of the United States; and for citation; and it will ever pray, and, etc.

THOS. A. EVANS,
Of Memphis, Tenn.;
A. W. SHANDS,
J. B. HARRIS,
Sol's for the Plaintiff in Error.

189 In the Supreme Court of the State of Mississippi, October Term, 1919.

CRESCENT COTTON OIL COMPANY

vs.

THE STATE OF MISSISSIPPI ex Rel.

This the 26th day of M'ch, 1920, came the plaintiff in error, the Crescent Cotton Oil Company, and filed herein, and presented to me Sidney Smith, the Chief Justice of the Supreme Court of the State of Mississippi, the above petition, praying the issuance of a writ of error intended to be urged by it, and praying also that a transcript of the record, proceedings and papers, under which the judgement herein was rendered by the Supreme Court of Mississippi duly authenticated, may be sent to the Supreme Court of the United States, and that such other or further proceedings may be — necessary in the premises.

On consideration whereof, the said writ of errors is hereby allowed upon the plaintiff in error, the Crescent Cotton Oil Company, giving bond according to the law in the sum of $3,000 which bond being forthwith given and approved, let the writ of error issue as prayed for.

This the 26th of M'ch, 1920.

SYDNEY SMITH,
Chief Justice of the Supreme Court of Mississippi.

190 *Assignment of Error.*

Supreme Court of the United States.

CRESCENT COTTON OIL COMPANY, Plaintiff in Error,

vs.

THE STATE OF MISSISSIPPI ex Rel., Defendant in Error.

Comes the Crescent Cotton Oil Company plaintiff in error by counsel and respectfully represents that it feels itself aggrieved by the proceedings and judgement of the Supreme Court of the State of Mississippi wherein it affirms the decree of the Chancery Court of Sunflower County, Mississippi made and filed in said cause on the 8th day of March, 1919, and assigns error thereon as follows.

The Supreme Court of Mississippi in and by said judgement erred in affirming said decree of the Chancery Court of Sunflower County, Mississippi, sustaining the validity of chapter 162 of the acts of the Mississippi Legislature of 1914, and adjudging the plaintiff in error the Crescent Cotton Oil Company, guilty of a violation of said act, and subjecting it to the fines, penalties and forfeitures denounced and imposed by said act.

1. In that by said affirmance of said decree of the Chancery Court of Sunflower County the plaintiff in error has been denied the right to own and operate its gins in the State of Mississippi owned and operated by it at the time of the passage of said act of Mississippi Legislature (chapter 162 laws of 1914) and long prior thereto and thus deprived of its property with- due process of law in violation of the 14th amendment of the Constitution of the United States.

2. In that by the affirmance of said decree of the Chancery Court of Sunflower County, denying to the plaintiff in error the right to own and operate its gins, and forfeiting its rights to do business in the State of Mississippi and imposing the fines, penalties and forfeitures denounced by the said act of the Mississippi Legislature (chapter 162 laws of 1914) is to deprive it of its property without due process of law and deny to it the equal protection of the law in violation of the 14th ammendment of the Constitution of the United States.

3. In that by the affirmance of said decree of the Chancery Court of Sunflower County sustaining the validity of said act of
191 Mississippi Legislature (chapter 162 laws of 1914) as applied to the plaintiff in error prohibiting it from owning and operating its gins in Mississippi in aid of, and as escential and necessary means of carr-ing on its business in the State of Mississippi, and perpetually injoining — from doing any local business in the State of Mississippi and expelling it from the State of Mississippi the said judgement of the Supreme Court of Mississippi is violative of section 8 article 1 of the Constitution of the United States which gives Congress the exclusive power to regulate commerce among the several States.

4. In that by the affirmance of said decree of Chancery Court of Sunflower County forfeiting the right of the plaintiff in error to do business in the State of Mississippi and perpetually injoining it from doing any local business in the State of Mississippi the judgement of the Supreme Court of Mississippi is in substance and effect to destroy the interstate commerce of the plaintiff in error and violation of section 8 article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several states.

5. In that by the affirmance of said decree of the Chancery Court of Sunflower County and sustaining the validity of said act of the Mississippi Legislature (chaper 162 laws of 1914) as applied to the plaintiff in error perpetually injoining it from operating a cotton gin in the State of Mississippi as an adjunct to and in aid of an interstate commerce, is to regulate and burden such commerce in violation of section 8 article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several states.

6. In that by the affirmance of said decree of the Chancery Court of Sunflower County and holding and adjudging that the said act of — Mississippi Legislature (chapter 162 laws of 1914) as applied to the plaintiff in error would not deprive it of any right guaranteed it by the Constitution of the United States, because the said decree and judgment are repugnant of the Constitution of the United States in that thereby,

(a) The plaintiff in error is deprived of its property without due process of law.

(b) The plaintiff in error is denied the equal protection of the law.

192 And are also repugnant to and in violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate exclusively commerce among the several states in that by the said judgment and decree the plaintiff in error will be deprived of the means of carr-ing on its interstate commerce successfully and its interstate commerce will thereby be directly burdened and destroyed.

7. In that, as it appears by the amended answer filed by the plaintiff in error to the bill of complaint in the Chancery Court of Sunflower County and by the undisputed evidence in the case that the plaintiff in error entered the State of Mississippi long prior to the passage of the said act of the Mississippi Legislature (chapter 162 laws of 1914) for the sole purpose — enjoining in the business of interstate shipper of cotton seed from the State of Mississippi into the State of Tennessee and that the operating of gins was necessary as an adjunct to such interstate business and a necessary means and aid to its successful prosecution, the judgment of the Supreme Court of the State of Mississippi affirming the said decree of the Chancery Court of Sunflower County and depriving the plaintiff in error of its

right to own and operate a gin or gins in connection with its interstate commerce and in aid thereof and forfeiting the right of the plaintiff in error to do business in the State of Mississippi was to greatly burden and destroy its interstate commerce in violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several states.

8. In that by the affirmance of said decree of Chancery Court of Sunflower County forfeiting the right of the plaintiff in error to do business in the State of Mississippi is in substance and effect to prohibit the plaintiff in error *of* carr-ing on an interstate commerce business in the State of Mississippi therefore violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several states.

9. In that by the affirmance of said decree of Chancery Court of Sunflower County perpetually injoining the plaintiff in error from doing any local business in the State of Mississippi would be as applied to the plaintiff in error in substance and effect to prohibit it from doing an interstate commerce business in Missi-
193 sippi and to regulate such business therefore in violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several states.

Wherefore the said Crescent Cotton Oil Company prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught and that it may be restored to all things which it has lost by the action and because of said judgment and decision.

THOS. A. EVANS,
Of Memphis, Tenn.;
A. W. SHANDS AND
J. B. HARRIS,
Attorney- and Counsel for Plaintiff in Error.

[Endorsed:] 20890. Crescent Cotton Oil Co. v. State of Mississippi ex Rel. Ross A. Collins, Atty. Genl. Assignment of Errors & Petition for Writ of Error. Received & filed Mar. 26, 1920. W. J. Buck, Clerk, By W. J. Brown, D. C.

194 THE UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Mississippi:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Mississippi before you or some of you, it being the highest court of law and of equity of the State of Mississippi in which a decision could be had in suit between the Crescent Cot-

ton Oil Company, and the State of Mississippi ex Rel. wherein was drawn in question the validity of authorities exercising under said State and also of certain statutes of the State of Mississippi on the ground of their being repugnant *of* the Constitution of the United States, and the decision was in favor of their validity a manifest error hath happened to the great damage of said Crescent Cotton Oil Company as by its complaint appears, we being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you that if judgment be therein given, then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States with this writ so that you may have the same at Washington on the 26th day of April, 1920, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States the 26 day of March in the year of our Lord, 1920.

[Seal U. S. District Court, Southern District of Mississippi.]

JAEN THOMPSON,
Clerk of the Dist. Court of the United States, So. Dist. Miss.

Allowed by
SYDNEY SMITH,
Chief Justice of the Supreme Court of the State of Mississippi.

[Endorsed:] 20890. Crescent Cotton Oil Co. v. State of Mississippi ex Rel. Ross A. Collins, Atty. Genl. Writ of Error. Received & filed Mar. 26, 1920. W. J. Buck, Clerk, By W. J. Brown, D. C.

195 *Writ of Error Bond.*

CRESCENT COTTON OIL COMPANY

vs.

THE STATE OF MISSISSIPPI ex Rel.

Known all men by these presents, That we, the Crescent Cotton Oil Company, as Principal, and United States Fidelity & Guaranty Co., as Surety, are held and firmly bound unto the State of Mississippi in the full and just sum of Three Thousand ($3,000.00) Dollars, to be paid to the State of Mississippi its Attorneys and assigns, and this payment well and truly to be made, we bind ourselves, our successors and assigns, firmly and severally, by these presents.

Sealed with our seals and dated this 3rd day of March, A. D. 1920.

Whereas at the present session of the Supreme Court of the State of Mississippi in the suit pending in said court between the Crescent Cotton Oil Company, as Appellant, and the State of Mississippi as Appellee a final judgment was rendered against the Crescent Cotton Oil Company and the said Crescent Cotton Oil Company, having obtained the allowance of a writ of error, and filed a copy thereof in the Clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Mississippi, citing and admonishing it to be and appear at the Supreme Court of the United States, at Washington within thirty days thereof;

Now the condition of the above obligation is such that if the said Crescent Cotton Oil Company shall prosecute said writ of error to effect and answer all damages and costs in full, if it fails to make its plea good, then the above obligation to be void, otherwise to be and remain in full force and virture.

CRESCENT COTTON OIL CO.,
By A. BOYD, *Sec. & Tres.*
UNITED STATES FIDELITY & GUARANTY CO.,
By T. M. STORM, *Agt. & Atty. in Fact.*

[Seal United States Fidelity & Guaranty Company, Incorporated 1896.]

Approved Mch. 26th, 1920.
SYDNEY SMITH,
Chief Justice Sup. Court of Miss.

[Endorsed:] 20890. Crescent Cotton Oil Co. v. State of Mississippi ex Rel. Ross A. Collins, Atty. Genl. Writ of Error Bond. Received & filed Mar. 26, 1920. W. J. Buck, Clerk, By W. J. Brown, D. C.

196 *Citation.*

CRESCENT COTTON OIL COMPANY

vs.

THE STATE OF MISSISSIPPI ex Rel.

The United States of America to the State of Mississippi:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Mississippi, wherein the Crescent Cotton Oil Company is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sydney Smith Chief Justice of the Supreme Court of the State of Mississippi, this the 26th day of March in the year of our Lord, 1920.

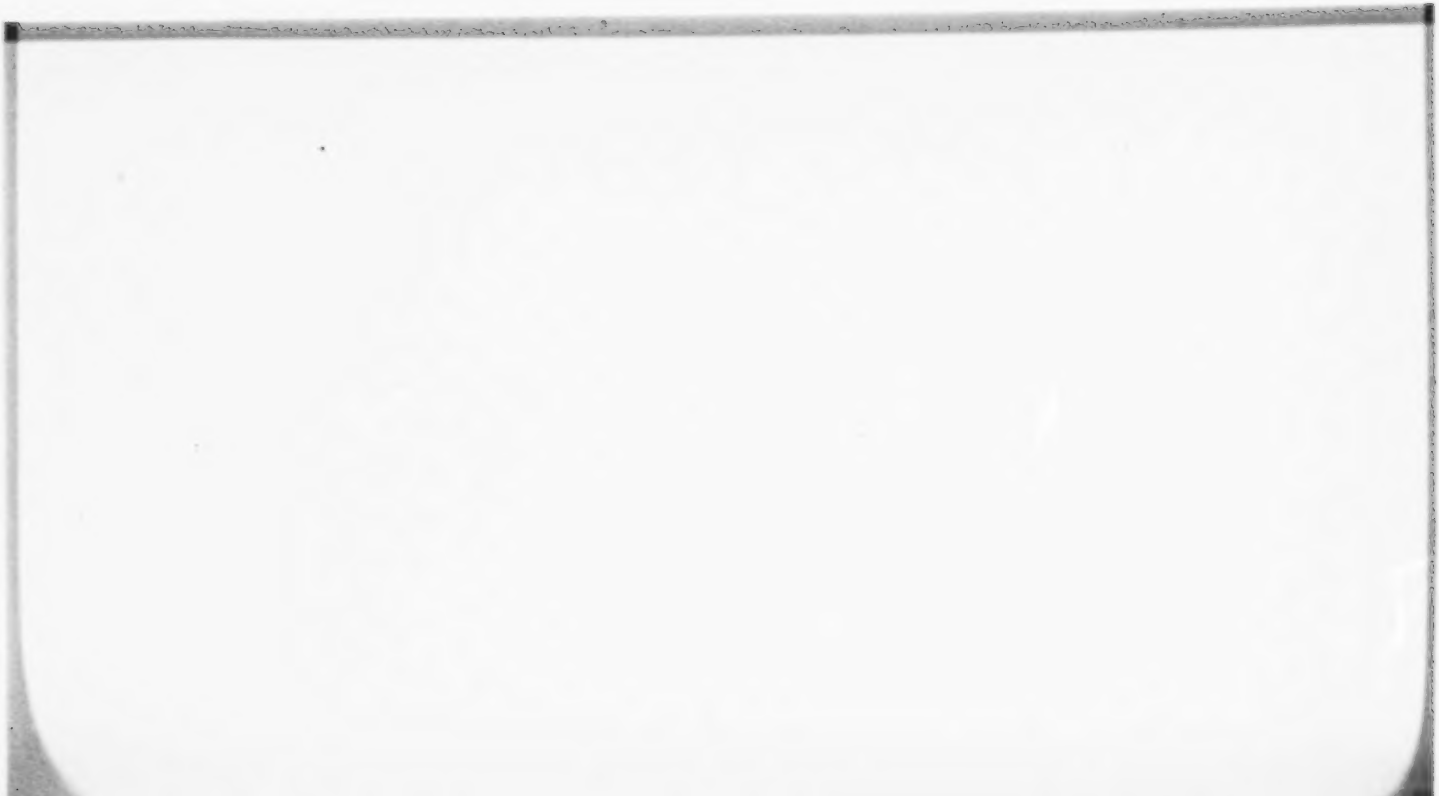
SYDNEY SMITH,
Chief Justice of the Supreme Court of the State of Mississippi.

I hereby acknowledge service of the foregoing Citation for, and on behalf of the State of Mississippi, this the 26th day of March 1920

FRANK ROBERSON,
Attorney General of the State of Mississippi.

[Endorsed:] No. 20890. Crescent Cotton Oil Co. v. State of Mississippi ex Rel. Ross A. Collins, Atty. Genl. Citation. Received & Filed Mar. 26, 1920. W. J. Buck, Clerk, By W. J. Brown, D. C.

Endorsed on cover: File No. 27,652. Mississippi Supreme Court. Term No. 897. Crescent Cotton Oil Company, plaintiff in error vs. The State of Mississippi. Filed May 3d, 1920. File No. 27,652.



No. 3[illegible]41

Supreme Court of the United States

OCTOBER TERM, 1920.

THE CRESCENT COTTON OIL COMPANY,
Plaintiff in Error,

Vs.

THE STATE OF MISSISSIPPI, ET REL,
Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF ON BEHALF OF THE CRESCENT COTTON OIL COMPANY, PLAINTIFF IN ERROR.

THOS. A. EVANS,
Of Memphis, Tenn.,
A. W. SHANDS,
J. B. HARRIS,
Solicitors for the Plaintiff in Error.

PROPOSITIONS

First: The application of the Act of the Mississippi Legislature, Chapter 162, Laws of 1914 to the plaintiff in error was to burden and destroy its interstate commerce, pages 11-30

Pullman Palace Car Company v. Kansas, 216 U. S. 68, 54 L. ed. 386;

McCall v. California, 156 U. S. 34 L. ed. 389;

Western Union Telegraph Company v. Kansas, 216 U. S. 34-54 L. ed. 369;

Ludwig v. Western Union Telegraph Company 216, U. S. 54 L. ed. 435;

Harrison v. Railroad Company 232, U. S. 58 L. ed 621;

Second: The plaintiff in error has the right to carry on local business in connection with and in aid of its interstate commerce, pages 17-16-20

Western Union Telegraph Company v. Kansas, supra;

Pullman Palace Car Company v. Kansas, supra;

Ludwig v. Western Union Telegraph Company, supra;

Harrison v. Railrod Company, supra;

60 L. R. A. page 619 and note;

Railroad Company v. Conner, 223 U. S. 56 L. ed. 438;

Text-Book Company v. Pigg, 217 U. S. 54 L. ed. 687;

Looney v. Grain Company, 245 U. S. 62 L. ed. 335;

Third: The Supreme Court of the United States will construe the State Laws for itself with reference to its operation regardless of the State decision, page 23

St. Louis Railroad Company v. Arkansas, 235 U. S. 363; 59 L. ed.;

American Mfg. Company v. St. Louis, 63 L. ed.;

Looney v. Grain Company, 62 L. ed. 236;

Fourth: The regulation of commerce and a burden thereon cannot be justified upon the ground that it is in exercise of police power, pages 21-3

Western Union Telegraph Company v. Kansas, 54 supra;

Chicago v. Sturgis, 222 U. S. 113, 56 L. ed. 215;

Lemieux v. Young, 211 U. S. 489, 52 L. ed. 285;

Cincinnati R. R. Co. v. Connersville, 218 U. S. 336, 54 L. ed. 1060;

Mutual Loan Company v. Martel, 222 U. S. 113, 56 L. ed. 215;

Salvage v. Jones, 225 U. S. 501, 56 L. ed. 1182;
Stockford Company v. Wright, 225 U. S. 540, 56 L. ed. 1182;
Railroad Company v. Wharton, 207 U. S. 328, 52 L. ed. 230;
Express Company v. Commonwealth, 214 U. S. 218, 53 L. ed. 973;
Fifth: A burden placed on interstate commerce by a State cannot be sustained because it applies to all persons alike, pages 16-17
Minns v. Barber, 136 U. S. 313, 319, 34 L. ed. 455, 457;
Robins v. Taxing District, 120 U. S. 489, 497, 30 L. ed. 694, 697;
Crew Levick Company v. Pennsylvania, 245 U. S. 62 L. ed. 294;
Sixth: A decree must be reversed because it forfeits the right of the plaintiff in error to do business in the State of Mississippi, pages 30, 41
Seventh: The plaintiff in error is denied the equal protection of the law, page 31
Eighth: Unjust discrimination and classification. The Act is unconstitutional because it unjustly discriminates against corporations and in favor of the individual, page 33
Southern Railroad Company v. Green, 216, U. S. 454, L. ed. 541;
Connerly v. Union Sewer Pipe Company, 180 U. S. 540, 46 L. ed. 690;
Gulf C. & S. F. R. R. vs. Ellis, 165 U. S. page 150, 41 L. ed. page 668;
Santa Clara County v. S. P. R. R. Company, 118 U. S. 394, 30 L. ed. 118;
Pembina Consolidated Silver Mining Co. v. Pennsylvania, 125 U. S. 181, 189, 31 L. ed. 650, 654;
Mo. Pac. R. R. Co. v. Mackie, 127 U. S. 205, 32 L. ed. 107;
Minneapolis & St. P. R. R. Co. v. Herrick, 127 U. S. 210, 32 L. ed. 109;
Minneapolis & St. P. R. R. Co. v. Beckwith, 129 U. S. 26, 32 L. ed. 585;
Charlotte C. & A. R. Co. v. Gibbs, 142 U. S. 386, 35, L. ed. 1051;
Covington & L. Turnpike Co. v. Sanford, 164 U. S. 578, 41 L. ed. page 560.

Supreme Court of the United States

OCTOBER TERM, 1920.

THE CRESCENT COTTON OIL COMPANY,
Plaintiff in Error,

Vs.

THE STATE OF MISSISSIPPI, ET REL,
Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF ON BEHALF OF THE CRESCENT COTTON OIL COMPANY, PLAINTIFF IN ERROR.

STATEMENT.

For convenience we will refer to the plaintiff in error as the "Oil Company" and the defendant in error as the "State".

This suit arises out of the construction and application of a Statute of the State of Mississippi, passed in 1914, Chapter 162, Laws 1914, entitled:

> "An Act to prohibit cotton seed oil companies and cotton compress companies, and other persons, associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton seed products and by-products and compresses from owning, buying,

leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties, and for other purposes".

A copy of this Act is attached as an appendix to this brief for the convenience of this Court.

The plaintiff in error, the Oil Company, is a corporation of the State of Tennessee and owned and operated an Oil Mill in the State of Tennessee. It was not operating any Oil Mill or interested in any Oil Mill of any kind, or the manufacture of any cotton seed oil products or compresses in the State of Mississippi. It was operating 2 cotton gins in the State of Mississippi for the sole purpose of acquiring cotton seed to be shipped to its Oil Mill in the State of Tennessee, and was so operating its gins for some years prior to the passage of the Act of the legislature above referred to. In February 1915 the State filed a bill in the Chancery Court of Sunflower County, of Mississippi, against the Oil Company claiming that it was operating gins in the State of Mississippi in violation of the said Act, and also charging the Oil Company with violation of the Anti-trust law of the State of Mississippi. This feature of the bill, that is to say, the violation of the anti-trust laws was subsequently eliminated by a decision of the Supreme Court holding that no case had been made against the Oil Company on that line.

The Oil Company answered the bill, (transcript page 10) and admitted that it was operating 2 cotton gins in the State of Mississippi but alleged that it had entered the State of Mississippi some years prior to the passage of this Act and had complied with all of the laws of the State obligatory upon it, and the conditions imposed upon Foreign corporations entering the State, and had invested a large sum of money in establishing its gins and in the acquisition of real estate and that to prevent it from using its property and enforcing the said Act against it would be violative of the constitution of the

United States and also of the constitution of the State of Mississippi in that it would be depriving it of its property without due process of the law; and further that to deny it the right to operate a gin in Mississippi while other persons and corporations were allowed to operate gins, would be violative of the constitution of the United States and of the State of Mississippi in that it would be denying to it the equal protection of the law.

It further sets up that it had been willing to dispose of its property at a fair value but that a purchaser could not be found except at a price which would subject the respondent to loss and that to require the respondent to sell for less than value and to penalize it for not selling for less value would be to deprive the respondent of its property without due process of the law, therefore violative of the constitution of the United States.

Some testimony was taken and a decree was rendered dismissing the bill and an injunction which had been granted was dissolved and an attachment of the property of the Oil Company released. An appeal to the Supreme Court of the State was prosecuted by the State, and there the decree of the court below was reversed and the cause remanded. The opinion of the Court on that appeal will be found on page 25 of the transcript.

When the case went back the Oil Company amended its answer. (See page 20 of transcript). In addition to the other matter set up in the original answer, the Oil Company set up the fact that it was operating an Oil Mill in the State of Tennessee, it had been for a long time prior to the passage of the Act, above referred to, engaged during all the time in buying cotton seed in the State of Mississippi to be shipped in interstate commerce, that is to say from the State of Mississippi to its Oil Mill in the State of Tennessee and that conditions arose which rendered it impossible for a person not operating a gin to compete successfully with persons owning gins in the purchase of cotton seed and it became

necessary for it in order to carry on its interstate commerce to acquire and operate a gin plant which it did in the year 1910, and continued operating the said gin from that time and that the gin was merely a necessary means and instrumentality made use of to carry on its business of cotton seed buyer for interstate shipment, and that operating said gin was a necessary incident to its business of interstate commerce; and that it had at no time engaged in any business in the State of Mississippi and was not at the date of the filing of the suit or at any time prior to, except such as was necessary for acquiring cotton seed to be shipped by it in interstate commerce and as incidental to its business as an interstate shipper of cotton seed, and that to deprive it of the right to operate a gin would be to greatly burden and to destroy its business of interstate commerce and therefore in conflict with the commerce clause of the constitution of the United States.

A good deal of testimony was taken on the second hearing, bearing mostly on the value of the property. A final decree was rendered which will be found on pages 111 and 112 of the transcript. By this decree the Oil Company was fined the sum of $1,900.00 for violation of the Act referred to above, and was enjoined from operating its cotton gin in the State of Mississippi, and *its right to do business in the State was forfeited* and its property and effects in Mississippi were attached and the Oil Company was given 90 days from the date of the decree to dispose of its 2 gins, one operated at Ruleville, Mississippi and the other at Love Station, and at the expiration of 90 days if the gins were not sold a receiver named in the decree was to take charge of the gins, sell them at public outcry for cash and out of the proceeds to pay the cost of the proceedings and the penalties imposed by the Court and then pay over the remainder, if any, to the Oil Company. The decree further provided that the Oil Company be perpetually enjoined from doing an intra state or local business in the State of Mississippi

and its right to do such local business was forfeited, this branch of the decree relating to the charge of the violation, by the Oil Company, of the Anti-trust laws of the State, which branch as heretofore stated was eliminated by the decision of the Supreme Court, holding there had been no violation of the Anti-trust law.

There is no material conflict in the testimony taken on the hearing bearing on the feature of the case presented by the amendment to the bill, that is to say, the claim by the defendant that the application of the statute would be destructive of its interstate commerce in which it was exclusively engaged and for which purpose alone it had entered the State of Mississippi.

This feature of the case was the one presented in the Supreme Court of the State on the second appeal and the facts of the case are substantially set forth in the opinion of the Court on the second appeal, beginning on page 119 of the transcript. The undisputed facts on this branch will be briefly stated as follows. quoting from the opinion of the Court:

> "The Oil Company was operating an Oil Mill in the State of Tennessee and it came into the State of Mississippi solely for the purpose of acquiring cotton seed to be shipped from the State of Mississippi to its Oil Mill in the State of Tennessee. That about the year 1904, four years before the Act in question, conditions had arisen in Mississippi which made it indispensable for one engaged in buying cotton seed to operate a gin. The expensive and burdensome method of buying cotton seed by purchasing it from brokers and ginners became so burdensome that in order to carry on the business successfully it was necessary to operate a gin, and the gins operated by the Oil Company were operated simply as *feeders* to its Oil Mill situated in the State of Tennessee."

The method pursued by the Oil Mill as set forth in the opinion of the Court on the last appeal, on page 120 of the record, is as follows:

> "The owner of the cotton seed brings his cotton to the gin and if he wishes to sell his seed to the gin the cotton is then ginned and the seed blown into the seed house of the defendant. Then the cotton is baled and gotten by its owner. It seems from this testimony that the Company had *actually negotiated for the purchase of the seed before the cotton was ginned.* If the owner of the cotton does not sell his seed to the gin they are not blown into the seed house but are reloaded on the wagon of the owner."
>
> "In this case, however, after a price had been agreed upon for the cotton seed and the seed thereby sold to the defendant it was necessary for the seed to be separated from the cotton by the process of ginning. In this ginning process the seed of the appellant were blown into the seed house. After which time, *either immediately or at a later date the seed* was shipped by the appellant in interstate commerce from Mississippi to Tennessee."

The Court also found as a matter of fact that an Oil Mill operating a gin is enabled thereby to purchase a larger volume of cotton seed than it is possible by being forced into the market or having to buy his seed from other gins.

> "The uncontradicted testimony in the case shows that all the seed bought by the defendant company from its ginning customers were bought for the purpose of shipment and were actually shipped to its Oil Mill in Tennessee. To use the phrase of the General Manager of the Company the gin was used as a *feeder* for its Oil Mill in Memphis, Tennessee."

A good deal of testimony was taken in the case in relation to the value of the 2 gin plants in Mississippi,

belonging to the plaintiff in error, and the efforts which had been made to dispose of them, and there was also much testimony taken in an effort to show that the plaintiff in error had been violating the anti-trust laws of the State.

The two opinions of the Supreme Court of the State, one on the first appeal, and one on the second, presented the case with which this court must deal without wading through the voluminous transcript.

SPECIFICATION OF ERRORS.

The Supreme Court of Mississippi in and by said judgment erred in affirming said decree of the Chancery Court of Sunflower County, Mississippi, sustaining the validity of chapter 162 of the acts of the Mississippi Legislature of 1914, and adjudging the plaintiff in error the Crescent Cotton Oil Company, guilty of a violation of said act, and subjecting it to the fines, penalties and forfeitures denounced and imposed by said act.

1. In that by said affirmance of said decree of the Chancery Court of Sunflower County the plaintiff in error has been denied the right to own and operate its gins in the State of Mississippi owned and operated by it at the time of the passage of said act of Mississippi Legislature (chapter 162 laws of 1914) and long prior thereto and thus deprived of its property without due process of law in violation of the 14th amendment of the Constitution of the United States.

2. In that by the affirmance of said decree of the Chancery Court of Sunflower County, denying to the plaintiff in error the right to own and operate its gins, and forfeiting its rights to do business in the State of Mississippi and imposing the fines, penalties and forfeitures denounced by the said act of the Mississippi Legislature (chapter 162 laws of 1914) is to deprive it of its property without due process of law and deny to it the equal protection of the law in violation of the 14th amendment of the Constitution of the United States.

3. In that by the affirmance of said decree of the Chancery Court of Sunflower County sustaining
191 the validity of said act of Mississippi Legislature (chapter 162 laws of 1914) as applied to the plaintiff in error prohibiting it from owning and operating its gins in Mississippi in aid of, and as essential and necessary means of carrying on its business in the State of Mississippi, and perpetually enjoining it from doing any local business in the State of Mississippi and expelling it from the State of Mississippi the said judgment of the Supreme Court of Mississippi is violative of section 8 article 1 of the Constitution of the United States which gives Congress the exclusive power to regulate commerce among the several States.

4. In that by the affirmance of said decree of Chancery Court of Sunflower County forfeiting the right of the plaintiff in error to do business in the State of Mississippi and perpetually enjoining it from doing any local business in the State of Mississippi the judgment of the Supreme Court of Mississippi is in substance and effect to destroy the interstate commerce of the plaintiff in error and violative of section 8 article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several States.

5. In that by the affirmance of said decree of the Chancery Court of Sunflower County and sustaining the validity of said act of the Mississippi Legislature (chapter 162 laws of 1914) as applied to the plaintiff in error perpetually enjoining it from operating a cotton gin in the State of Mississippi as an adjunct to and in aid of an interstate commerce, is to regulate and burden such commerce in violation of section 8 article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several States.

6. In that by the affirmance of said decree of the Chancery Court of Sunflower County and holding and

adjudging that the said act of the Mississippi Legislature (chapter 162 laws of 1914) as applied to the plaintiff in error would not deprive it of any right guaranteed it by the Constitution of the United States, because the said decree and judgment are repugnant to the Constitution of the United States in that thereby.

(*a*) The plaintiff in error is deprived of its property without due process of law.

(*b*) The plaintiff in error is denied the equal protection of the law.

192 And are also repugnant to and in violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate exclusively commerce among the several states in that by the said judgment and decree the plaintiff in error will be deprived of the means of carrying on its interstate commerce successfully and its interstate commerce will thereby be directly burdened and destroyed.

7. In that, as it appears by the amended answer filed by the plaintiff in error to the bill of complaint in the Chancery Court of Sunflower County and by the undisputed evidence in the case that the plaintiff in error entered the State of Mississippi long prior to the passage of the said act of the Mississippi Legislature (chapter 162 laws of 1914) for the sole purpose of engaging in the business of interstate shipper of cotton seed from the State of Mississippi into the State of Tennessee and that the operating of gins was necessary as an adjunct to such interstate business and a necessary means and aid to its successful prosecution, the judgment of the Supreme Court of the State of Mississippi affirming the said decree of the Chancery Court of Sunflower County and depriving the plaintiff in error of its right to own and operate a gin or gins in connection with its interstate commerce and in aid thereof and forfeiting the right of the plaintiff in error to do business in the State of Mississippi was to greatly burden and destroy its in-

terstate commerce in violation of section 8 article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several States.

8. In that by affirmance of said decree of Chancery Court of Sunflower County forfeiting the right of the plaintiff in error to do business in the State of Mississippi is in substance and effect to prohibit the plaintiff in error carrying on an interstate commerce business in the State of Mississippi therefore violative of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several States.

9. In that by the affirmance of said decree of Chancery Court of Sunflower County perpetually enjoining the plaintiff in error from doing any local business in the State of Mississippi would be as applied to the plaintiff in error in substance and effect to prohibit it
193 from doing an interstate commerce business in Mississippi and to regulate such business therefore in violation of section 8 of article 1 of the Constitution of the United States which gives Congress the power to regulate commerce among the several States.

ARGUMENT.

THE APPLICATION OF THE ACT TO THE PLAINTIFF IN ERROR BURDENS AND DESTROYS ITS INTERSTATE COMMERCE.

On the first appeal the Supreme Court of the State of Mississippi held that a Foreign Corporation could be expelled from the State if it had entered the State with the State's permission and complied with all the conditions prescribed by the State for the admission of Foreign Corporations unless there was some provision in the Constitution of the United States which protected or which would be violated by expelling it.

In the case at bar it was admitted that the plaintiff in error, the Oil Company, had entered the State of Mississippi to engage in the business of buying cotton seed for shipment to Tennessee many years prior to the passage of the Act of 1914. (See appendix.) That it was operating 2 gins in the State of Mississippi for several years prior to the passage of said Act and had invested large sums of money in the establishment of this business in the State of Mississippi, and it claimed on the first appeal that the Act of the Legislature was unconstitutional being violative of the State Constitution and the 14th Amendment of the Constitution of the United States in that to apply it to the defendant would be to deprive it of its property without due process of law and to deny to it the equal protection of the law.

The Act was also attacked upon the ground that it was discriminatory, class legislation, and invalid from any point of view. In its decision, however, on the first appeal the Court did not consider the alleged inhered invalidity of the Act, but held that as the Oil Company was a foreign corporation it could be expelled and no right guaranteed to it by the Constitution of the United States was infringed, in other words that whatever might be held as to the validity of the Act as applied to domestic corporations and individuals that it would in no way affect the right of the State to expell the foreign corporation.

We will present first for the consideration of the Court the question raised by the amendment to the answer; that is to say that the operation and effect of the Act as applied to the Oil Company would be to greatly burden and destroy its interstate commerce.

In the consideration of this question we would bring in to view again the admitted facts which are set forth in the opinion of the Supreme Court of the State of Mississippi on the second appeal which are in substance as follows:

"Long prior to the passage of the Act in question the Oil Company, a corporation of the State of Tennessee, owning and operating an Oil Mill in the State of Tennessee had entered the State of Mississippi for the purpose of procuring cotton seed to be shipped from the State of Mississippi to its Oil Mill in the State of Tennessee, and that it was in the State of Mississippi for no other purpose; that in 1910, four years prior to the passage of the Act, conditions had arisen in Mississippi which made it necessary, in order to acquire cotton seed at such price as would enable it to operate its Oil Mill in Tennessee to advantage and successfully, to operate 2 gins for the reason that the almost invariable custom had arisen whereby the cotton owner who wishes to sell his seed sells them to the one who does the ginning, and that the operator of the gin is thereby enabled to acquire a larger quantity of seed at a more reasonable price than if he did not operate a gin and was compelled to buy the seed from other gins or through brokers; that the cotton seed acquired by him through his ginning operations were bought before the ginning was done and that the ginner made the purchase, the wagon containing the cotton was drawn immediately in the gin and the seed separated from the lint cotton and blown into the seed house or immediately shipped in interstate commerce to the State of Tennessee; that the gins operated by the Oil Company were operated as necessary *feeders* to its Oil Mill in Tennessee and had become necessary as such *feeders* to enable the Oil Mill to remain in the business of cotton seed buyers in Mississippi."

It is undisputed that all of the seed acquired by the Oil Company through its gin was shipped from the State of Mississippi to its Oil Mill in the State of Tennessee. The Oil Company was not interested in any Oil Mill or any Oil Mill business in the State of Mississippi

or engaged in buying cotton seed in the State of Mississippi except as a buyer of seed to be shipped from the State of Mississippi to its mill in Tennessee.

We are not insisting that ginning or manufacturing is interstate commerce, but we are insisting in the light of the decisions of this Court to which we call attention that the operation of the gin was a necessary incident and was absolutely necessary and essential to its carrying on that business successfully and to deny to it the right to operate a gin was to greatly burden its interstate commerce directly and in fact to destroy it, and not only that but to *affect the operation of and to burden the business carried on by it in the State of Tennessee.* The success of that business depended, of course, upon the price at which cotton seed, necessary for its operation, could be acquired.

We assume that it will not be questioned at this time that a State cannot exclude from its borders or expel therefrom or annex conditions or impose any burden either under the guise of taxation, license fees, police regulations or otherwise a corporation engaged strictly in the business of interstate commerce. The Oil Company expects to show under the principles laid down by this that this Court has made it clear that the burden or restriction imposed is not confined to the actual matter of transportation but the protection of the commerce clause of the Constitution of the United States and extends to all necessary incidents and instrumentalities for the carrying on of that business.

The Court may bear in mind that Congress by the Act to regulate Commerce, as amended by the Act of June 10, 1910, has greatly extended the operation of the Act by defining the word "transportation" as used in the Act, to all facilities of shipment or carriage irrespective of ownership or contract expressed or implied, and applies it to all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, icing, storage and handling of

property transported. (See Section 7, Act of June 10, 1910, amending the Act, to regulate Commerce, of February 4, 1887).

The Court will see by reference to Section 1 of the Act of February 4, 1887, that its provisions have been greatly bothered, that it was not intended to restrict the operation of the Act to the actual delivery of the commodity to the carrier for actual transportation. The Court will find the Act of February 4, 1887, set forth in Volume 3, Federal Statutes Annotated, page 809, and the Act as amended in Volume 1912 Supplement to Federal Statutes Annotated, page 111. We think these provisions of the Act have a bearing on the case at bar.

In speaking of the absolute power of the Court to exclude a foreign corporation, Mr. Justice White said in the case of the *Pullman Palace Car Company vs. Kansas,* 216 U. S. 68, 54 L. Ed. 386:

> "Only two exceptions or qualifications have been attached to it, in all the numerous adjudications in which the subject has been considered since the judgment of this Court was announced more than one-half century ago, in the case of the *Bank of Augusta vs. Earle,* 13 Peters 519, 10 L. Ed. 274, one of these qualifications is, that a State cannot exclude from its limits a corporation engaged in interstate commerce or foreign commerce, established by the decision in the *Pensacola Telegraph Company vs. Western Union Telegraph Company,* 96 U. S. 1, 24 L. Ed. 708."

Speaking on the same subject in the case of the *Western Union Telegraph Company vs. Kansas* 216, U. S. 34, 54 L. Ed. 369, Mr. Justice Harlan quoting from the opinion of Chief Justice Waite in the Pensacola case stated:

> "We are aware that, in *Paul vs. Virginia* supra this Court decided that a State might exclude a corporation of another State from its jurisdiction, and

that corporations are not within the clause of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in several States,' Art. 4. Section 2. That was not, however, a case of corporation engaged in interstate commerce; and enough was said by the Court to show that, if it had been, very different questions would have been presented."
See also:

McCall vs. California, 156 U. S. 34 L. Ed. 394.

Quoting from the opinion of Mr. Justice White in the case of *Pullman Palace Car Company vs. Kansas,* 216 U. S. 65, 54 L. Ed. 385:

"A State may not exert its concededly lawful power in such a manner as to impose a direct burden on interstate commerce, this is so elementary as to require no reference to the multitude of authorities by which it is sustained.

"Even though a power exerted by a State when inherently considered may not in, and of itself abstractly impose a burden on interstate commerce, nevertheless such exertion of authority will be a direct burden on such commerce, if the power as exerted operates a discrimination against that commerce, or what is equivalent thereto discriminates against the right to carry it on. *I. M. Darnell & Son Company vs. Memphis,* 208 U. S. 113, 52 L. Ed. 413; *American Steel & Wire Company vs. Speed,* 192 U. S. 500, 48 L. Ed. 538 and authorities there cited."

Beginning with the case of *Gibons vs. Ogden,* 1 Wheaton; *Brown vs. Maryland,* 12 Wheaton and coming down to the present day cases involving the proposition arising on various states of fact have come before the Supreme Court of the United States so numerously that the proposition has become, as stated by Chief Justice White, "Too elementary to require citation of authority."

This Court, of course, is well aware it never expressly over-rules a case, and its last decision upon any question must be taken as the law regardless of the fact, the decision may be in apparent conflict with some former decision, but it must be remembered, however, that it deals with the facts presented in the case before it, and what may be apparent conflicts are found not to be such when the facts in the particular case are analyzed and understood. There are, however, four recent decisions by the Supreme Court of the United States which taken together cover every phase of the branch of the case we are now considering, so complete and exhaustive are the decisions in these cases that we do not feel it necessary to burden the Court with the great array of cases in which the questions have been so repeatedly considered.

We refer to the following cases:

Western Union Telegraph Company vs. Kansas, supra.

Pullman Palace Car Company vs. Kansas, supra.

Ludwig vs. Western Union Telegraph Company, 216 U. S. 54 L. Ed. 435; and

Harrison vs. Railroad Company, 232 U. S. 58 L. Ed. 621.

In addition to the propositions already set forth the following propositions are established by the cases last cited:

(a) A burden imposed by a state on interstate commerce is not to be sustained simply because the statute imposing it applies alike to all of the people of all of the states, including the people of the State enacting the statute.

Minn. vs. Barber, 136 U. S. 313-319, 34 L. Ed. 455-457 3rd. Inters. Com. Rep. 185.

Robins vs. Taxing District, 120 U. S. 489-497, 30 L. Ed. 694-697, 1st. Inters. Com. Rep. 45.

Crew Levick Company vs. Pennsylvania, 245 U. S. 62 L. Ed. 294.

(b) That a corporation engaged in interstate commerce cannot be deprived of the right to do a *local or intra state business* in connection with said commerce as to do so would be to regulate and burden such commerce. The language of the Court in the case of the *Western Union Telegraph Company vs. Kansas,* 54 L. Ed. 336 is as follows:

"But it is said that none of the authorities cited are pertinent to the present case, because the State expressly disclaims any purpose by the statute in question to obstruct or embarrass interstate commerce, but seeks only to prevent the Telegraph Company from entering the fields of domestic business in Kansas without its consent and without conforming with the requirements of its statute. But the disavowal by the State of any purpose to burden interstate commerce cannot exclude the question as to the fact of such a burden being imposed, or as to the *unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute reasonably interpreted, either directly or by its necessary operation burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, although the Company may do both interstate and local business.* This Court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through the forms to the substance of things. Such is an established rule of constitutional construction, as the adjudged cases abundantly show." The Court then proceeds to discuss numerous cases bearing on that point.

The Court further said at page 363:

"To carry on interstate commerce is not a franchise or privilege granted by the state, it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; *and the accession of mere corporate facilities as a matter of convenience of carrying on their business cannot have the effect of depriving them of such rights, unless Congress should see fit to interpose some Legislation on the subject.*"

In the case of the *Pullman Palace Car Company vs. Kansas,* 216 U. S. 86, L. Ed. 386, the Court said:

"As it is obvious that the Pullman Company in so far as it was engaged in interstate commerce, in the State of Kansas, was independent of the will of the State, it follows, that the State had no absolute power to exclude the corporation, and therefore no authority to impose an unconstitutional burden as the price for the privilege of *doing local business* in conjunction with the interstate commerce business. The power to exclude in such a case being only relative, affords no warrant for the exertion by the State of absolute prohibition, moreover, to me it seems, where the right to do interstate commerce business exists, without regard to the assent of the *State, a State law which arbitrarily forbids a corporation from carrying on, with its interstate commerce business a local business would be a direct burden on interstate commerce and in direct conflict with the principles stated in proposition one.*"

The rule on this subject is thus laid down in a note to the *Western Union Telegraph Company vs. Taggart,* 60 Lawyer's Reporter annotated at page 691:

"If the business is actually a part of interstate commerce and *assists in any degree in increasing or aiding in carrying on such commerce* it is beyond the power of the State to tax." Cited *McCall vs. Cali-*

fornia, 136 U. S. 104, 34 L. Ed. 391. *Crutcher vs. Kentucky,* 141 U. S. 47, 35 L. Ed. 649.

The case of the *Western Union Telegraph Company vs. Kansas. Pullman Palace Car Company vs. Kansas. Ludwig vs. Western Union Telegraph Company* have been expressly reaffirmed by this Court of the United States in the case of the *International Text-book Company vs. Pigg,* 217 U. S. 54 L. Ed. 687.

Railroad Company vs. Conner 233 U. S. 56 L. Ed. 438.

Looney vs. Crain Company, 245 U. S. 62 L. Ed. 335.

In the case of the *Railroad Company vs. Conner,* supra the Court said:

"Therefore it is obvious that the tax is of the kind decided to be unconstitutional (that is to say as to bearing on interstate commerce) since the decision below in the present case even if the temporary forfeiture of the right to do business declared by the statute to be confined by construction, as it seems to have been below, to business wholly within the State." Citing cases of

Western Union Telegraph Company vs. Kansas.
Pullman Palace Car Company vs. Kansas.
Ludwig vs. Western Union Telegraph Company.

In the case of the *Western Union Telegraph Company vs. Kansas,* 54 L. Ed. at p. 365, the Court said in reference to the effect of statute being limited to local business:

"Notwithstanding the fact that the regulation of interstate commerce is committed by the *Constitution to the United States, the State is enabled to say that it shall not be carried on in this way, and to that extent to regulate it.*"

In the case of the *International Text-book Company vs Pigg*, 217 U. S. 54 L. Ed. page 687 the Court said:

> "It is the established doctrine of this Court that a State may not in any form or under any guise directly burden the prosecution of interstate commerce."

This language was used in respect to the operation of the statute upon local matters.

Of course, it necessarily follows from the authorities which we have cited above and which are late utterances of this Court on the subject, if the State could not impose a tax upon a local business carried on in connection with an interstate commerce, and make the payment of that tax or the filing of the statements a condition to the carrying on of the local business, manifestly the Legislature could not under any guise or in any way prevent the carrying on of the local business thus related to and necessary to or in aid of the carrying on of interstate commerce.

In the case at bar it is conceded that the Oil Company was in the State for no other purpose than for acquiring cotton seed to be shipped in interstate commerce. It is conceded that the operation of the gin had become absolutely necessary to enable the Company to carry on this business with success. It is found as a matter of fact that the operation of the gin was a mere *feeder* to its Oil Mill in Tennessee.

It is found as a matter of fact that the cotton seeds were actually purchased in the lint before they were put through the process of ginning and it was necessary to separate the cotton seed from the lint in order that it might be shipped, and when it was separated it was blown into the seed house and immediately shipped from the State of Mississippi into the State of Tennessee.

We are insisting here that the local business of ginning, which had been established long prior to the pas-

sage of the Act of 1914, had become a necessary agency or corporate facility and instrumentality in carrying on its interstate commerce. Therefore, the Act as applied to the Oil Company being destructive of its interstate commerce, was a violation of the commerce clause of the Constitution of the United States.

That the operation of a gin is necessary for the successful operation of the Oil Mill is recognized by the terms of the Act, for by that Oil Mill and Compresses are allowed to operate *ginneries* of a certain capacity located in the city or town where the Oil Mill or Compress is located. In other words in order to operate its Oil Mill successfully under conditions existing, it is necessary to operate a gin, that the ginning had become so integrated with its interstate commerce that to deprive it of the right to operate the gin was to destroy this interstate commerce.

> (c) "That the police powers reserved to the State are such as incidentally effect interstate commerce and as such are established for the protection, safety and convenience of the people, and are not in themselves in any just sense, an obstruction to, or in conflict with the substantial rights of those engaged in interstate commerce, but are referable to the police powers of the State and to be respected until Congress covers the subject of Legislation."
>
> *Western Union Telegraph Company vs. Kansas*, 54 L. Ed. 365.

This view as to the restricted meaning of the police power as reserved to the State is fully supported in the cases of:

> *Chicago vs. Sturgis*, 222 U. S. 113, 56 L. Ed. 215.
> *Lemieux vs. Young*, 211 U. S. 489, 53 L. Ed. 285.
> *Cincinnati R. R. Co. vs. Connersville*, 218 U. S. 336, 54 L. Ed. 1060.

In the case of *Austin vs. Tennessee* speaking on the subject the Court said:

> "Of course, it is one thing to force into a state against its will articles or commodities that can have no possible connection with or relation to the health of the people. It is quite a different thing to force into the market of a State, against its will, articles or commodities which may not be unreasonably held to be injurious to the health."

In the recent case of the *Dakota Central Telephone Company vs. South Dakota. Railroad Company vs. South Dakota*, 250 U. S. 160, 63 L. ed. 910, this Court again announced this view:

> "But it is settled beyond any question that a State cannot under the guise of police powers burden interstate commerce."

See *Kidd vs. Pearson*, 128 U. S. 120, 32 L. Ed. 345.

Salvage vs. Jones, 225 U. S. 501, 56 L. Ed. 1182.

Stockford Company vs. Wright, 225 U. S. 540, 56 L. Ed. 1182.

Railroad Company vs. Wharton, 207 U. S. 328, 52 L. Ed. 230.

Express Company vs. Commonwealth, 214 U. S. 218, 53 L. Ed. 972.

Railroad Company vs. Husen, 95 U. S. 465, 24 L. Ed. 527.

Bearing on the question before this Court it is settled that this Court is not concluded by a State's interpretation of its statute in matters involving constitutional protection, but will decide the question for itself. In the case of *Crew Levick Company vs. Pennsylvania*, 245 U. S. 292, 62 L. Ed. 295, the Court said:

"While this Court will accept as controlling, the decision of the State Court of last resort respecting the proper construction of the statute, but it will determine the validity of the statute under the Federal constitution upon its own judgment of the actual operation and the effect of the statute irrespective of the form it presents, or how it is characterized by the State Courts." See also

St. Louis Railroad Company vs. Arkansas, 235 U. S. 363, 59 L. Ed. 271 and cases cited, also

American Mfg. Company vs. St. Louis, advanced sheets August 15, 1919, page 651.

"The power exerted is the test and not the reason given for its exercise." *Pullman Palace Car Company vs. Kansas*, 216 U. S. 70, 54 L. Ed. 387.

"The Supreme Court of the United States is not concluded by the State's interpretation of a statute, but by the application of the law in the particular case". See also

Looney vs. Crain Company, 245 U. S. 62 L. Ed. 235.

"This Court, in other words determines the validity of a State statute by the effect which it has and the power exerted under it, in the particular case under consideration. It may some time appear in a multitude of cases in which a particular subject is presented, that there is conflict, but as was said by this Court, the conflict does not exist because they proceed upon conditions peculiar to the particular case."

Looney vs. Crain Company, supra 62 L. Ed. 236.

At the risk of being considered prolix we quote the following from the opinion of Chief Justice White in the case of the *Western Union Telegraph Company vs. Kansas*, 54 L. Ed. page 276, as it applies so applicably to the case at bar:

"Let me illustrate. The Telegraph Company has expended in the State large sums of money, adequate for the purpose of enabling it to do both local and interstate business. The investment is there, and its magnitude, it is fair to assume, is, in part a resultant of the requqirements of the local business. The continued beneficial existence of the investment depends upon the right to use the property for the purpose for which it was acquired; that is, for both interstate and local business. The State law takes the property, or what is equivalent thereto, imposes an unconstitutional and confiscatory burden, upon the condition that such burden be discharged or the local business be abandoned. What possible election can there be? The property is in the State. It has been invested therein for the very purpose of doing local as well as other business. If the unconstitutional burden be not assumed, local business must cease, and hence the property established for the purpose of doing the local business becomes worthless and is in effect confiscated. If, on the other hand, the unconstitutional burden be borne, a like result takes place.

"Nor, I submit, is there force in the suggestion that, under the facts here disclosed, the Company cannot be heard to complain, because, as it was in the State without express authority, it must be assumed to have gone into the State and made its investment subject to the exertion by the State of its authority. I concede the proposition to be sound in so far as it includes the right of the State to exert its lawful powers. That is to say, I concede that the corporation in going in and investing its property within the State did so subject to the right of the State to exert, as to the property thus in the State, all lawful powers which might be called into play as to property so situated, of the character of that under consideration. But I cannot assent to

the correctness of the contention in so far as it asserts that the State may suffer a corporation to come into its bordens, invest in property therein, and then, after having allowed, by acquiescence or implied invitation, such a situation to arise, the State may treat the corporation as if it had never come in and its property within the State as if it were wholly out of the State, and despoil the corporation of its rights and property upon such false assumption."

Now it is true that in the case last quoted from, a question of taxation was involved, but the principle underlying the case was, that the burden placed upon the local business or the deprivation of the right of the telegraph company to do the local business, the condition imposed upon the right to carry on a local business bore upon the interstate business and upon the property of the telegraph company out of the State.

The principle applies with equal force to the case at bar. The appellant had come into the State of Mississippi and established its interstate business there, and in order to carry on that interstate business, and its business out of the State successfully, was compelled under the conditions, which changed after entering into the State, to invest its capital in and operate a gin in connection with it.

The decisions which we have reviewed and referred to above settle conclusively the following propositions as bearing on the case at bar.

1. That a State cannot exclude or expel a foreign corporation engaged in interstate commerce.

2. That a State cannot either directly or indirectly under the guise of police power or otherwise regulate or burden interstate commerce.

3. That protection from State regulation is not confined to the matter of transportation or movement of commodities in interstate commerce, but

extends to all those instrumentalities, corporate conveniences, or facilities which assist in the carrying on or aiding such commerce.

4. That to deprive a corporation of the right to carry on a local business which is directly connected, and assists in any degree in increasing and aiding in the carrying on of such commerce is beyond the power of the State to control, because to deprive of this right would be to burden interstate commerce.

5. That a State statute cannot be upheld by the decision of the State Court, or by a construction of a State Court, that the statute is only intended to apply to local or intra state business, but the validity of the statute under the Federal Constitution shall be determined by the Supreme Court of the United States upon its own judgment of the operation and effect of the statute irrespective of the form which it presents, or how it is characterized by the State Court, the power exerted is the test and not the reason given for the exercise.

6. That the statute bears by its terms upon all persons and corporations in the State alike, will not sustain the statute if in its application to a particular corporation or person, it imposed either a direct or an indirect burden upon interstate commerce and in the particular instance regulates it in effect.

The State Court based its decision upon the decisions of this Court in the case of *Kidd vs. Pearson*, 108 U. S. 1, 32 L. Ed. 346, and *Hammer vs. Dagenhoit*, 247 U. S. 251, 62 L. Ed. 1101. We are not in any way criticizing these decisions but in those cases the Court was dealing with the particular state of facts presented. The manufacturing of liquor in the one case and of cotton goods in the other was the dominant business, the purpose for which the distillery and the cotton mill were established. The interstate commerce was merely incidental.

In the case at bar the interstate commerce was the dominant business, the business for the carrying on of which the Oil Company had entered the State of Mississippi. The ginning was merely incidental to this business, a necessary instrumentality for carrying it on. The fact that a large part of the products of a factory may be shipped in interstate commerce does not take the factory out of the operation of the State laws or deprive the State of the right to adopt police regulations in regard to the same or even to prohibit the manufacturing.

In the case at bar the Oil Company had come into the State of Mississippi with its consent, complied with all the conditions required for the purpose of engaging in interstate commerce and in carying on that business it had adopted necessary facilities for conducting the business successfully, the gin was such an instrumentality and to deprive it of the right to operate the gin, connected with its interstate commerce was to destroy commerce, so necessary had the gin become to that business.

In the language of Chief Justice White in the case of the *Telegraph Company vs. Kansas*, supra, we quote as applicable:

> "But I cannot assent to the correctness of the contention in so far as it asserts that the State may suffer a corporation to come into its borders, invest in property therein, and then, after having allowed, by acquiescence or implied invitation, such a situation to arise, the State may treat the corporation as if it had never come in and its property within the State as if it were wholly out of the State, and despoil the corporation of its rights and property upon such false assumption. The continued beneficial existence of the investment depends upon the right to use the property for the purpose for which it was acquired; that is, for both interstate and local business. The *State law takes the property, or what is equivalent thereto, imposes a confiscatory burden, upon the condition that such burden be dis-*

charged or the local business be abandoned. The property is in the State. It has been invested therein for the very purpose of doing local as well as other business."

In the case at bar the Act of the legislature prohibits the carrying on of the local business. It subjects the Oil Company to heavy fines and penalties, seizes its property and utterly destroys its business of interstate commerce, which depended on the carrying on of the local business. There is no question here about any mere intention or mental condition, in reference to the interstate commerce. The Oil Company was doing no other business in the State of Mississippi. It had established the gin as a *feeder* for its Oil Mill in the State of Tennessee, and the effect of the operation of the statute upon it was to destroy this interstate business.

In the case of the *Telegraph Company vs. Kansas, supra,* the Court held:

"If the statute reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged, to be invalid whatever may have been the purpose for which it was enacted, although the company may do both interstate and local business."

Again the Court said in the case of the *Pullman Company vs. Kansas, supra*:

"The power to exclude in such a case being only relative, affords no warrant for the exertion by the State of absolute prohibition, moreover, to me it seems, where the right to do interstate commerce business exists without regard to the assent of the State, and state laws which arbitrarily forbids a corporation from carrying on, with its interstate commerce a local business would be a direct burden on its interstate commerce."

We respectfully submit that the principles announced in these cases bear directly upon the case at bar. There is no doubt of the fact that the Oil Company had the right to carry on its interstate commerce business in the State of Mississippi without the assent of the State, to deny it the right to acquire the article used in such commerce necessarily burdens that commerce; to forbid it to employ agencies, in themselves perfectly lawful and recognized as such by the laws of the State, would be a direct burden upon the commerce and destructive of it. This was said by this Court in the case of the *Telegraph Company vs. Kansas, supra*:

> "To carry on interstate commerce is not a privilege or a franchise granted by the State, it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States, and the accession of a mere corporate facility as a matter of convenience of carrying on their business cannot have the effect of depriving them of such right unless Congress should see fit to interpose some legislation on the subject."

Again in the same case this Court said:

> "Notwithstanding the fact that the regulation of interstate commerce is committed by the Constitution of the United States the State is enabled to *say that it shall not be carried on in this way and to that extent to regulate it.*"

We respectfully submit that the distinction between the case at bar, on the undisputed facts, and the case relied upon by the Supreme Court of the State of Mississippi is obvious.

The Oil Company had invested its money in property in the State of Mississippi necessary for carrying on its interstate commerce. It is true that the investment in dollars and cents is not as large as that of the Telegraph Company in the State of Kansas but rela-

tively it was the same. The maxim "*de minimis non curat lex*" has no application to the invasion of constitutional rights and it is upon such rights that we are contending here.

We call the Court's attention here to the fact that the Act of the Mississippi Legislature, under consideration, provides that Oil Mills may operate ginneries located in the town where the Oil Mill is located. This provision of the Act works a hardship and is a discrimination against the Oil Company, the plaintiff in error here, and all Oil Companies whose oil plants are located outside of the State. All Oil Companies whose plants are located in the State of Mississippi can operate gins. The plaintiff in error, who owns no oil mill in Mississippi and whose oil mill is out of the State of Mississippi cannot operate a gin in the State of Mississippi, and to remain in the business of cotton seed buyer in the State of Mississippi is forced to purchase seed from other gins or brokers, if at all, thus placing it at a disadvantage, destructive of its interstate commerce.

THE DECREE.

We call the Court's attention here to the fact that the decree rendered in accordance with the terms of the Act forfeits the right of the Oil Company to do business in the State of Mississippi. This decree is erroneous for that reason, because under the admitted facts the plaintiff in error was engaging in no other business in the State of Mississippi except as such business as was necessary, under the conditions existing, to carry on interstate commerce. The right of the Oil Company to do interstate business in the State of Mississippi could not be forfeited by the Legislature or by the decree of the Court, and this action of the Court is assigned for error. See authorities cited above and Sec. 1 of Act, Appendix, page 44.

"THE OIL COMPANY DENIED THE EQUAL PROTECTION OF THE LAW."

There is another phase of this case which we think is conclusive as to the constitutionality of the Act of the Legislature under consideration, that is that it is a clear discrimination as against corporations and in favor of individuals. The Act prohibits *corporations* owning or being interested in an oil mill or oil mill products or compresses from operating gins, while the individual own both oil mill and gin without any restriction, except the individual cannot be interested in, or become a stockholder or otherwise in a *corporation* owning or operating a gin. An individual may own an oil mill and operate as many gins as he sees fit. A partnership or association of individuals unincorporated may own an oil mill and at the same time operate gins, but a corporation owning or being interested in an oil mill cannot operate a gin. Under the terms of the Act, Section 1 of the Act provides:

> "It shall be unlawful for any *corporation* created under the laws of the state or authorized to do any local business in the state under the laws, to own, buy, lease or otherwise acquire any cotton gin or any interest therein, or to manage, use, control or operate the same, etc."

It then proceeds as follows:

> "Nor shall any person who is interested in any cotton seed oil company or cotton seed meal manufacturing company either in person or as a trustee, directly or indirectly, or who is directly or indirectly interested in any compress, be or become a *stockholder, director* or *manager* of a *corporation* doing a ginning business."

The Court will see from this that the restriction upon individuals is merely that of having an interest in a *corporation* doing a ginning business, in other words,

as was said an individual may own an oil mill, be interested in a *corporation* owning oil mill, but he is prohibited by the Act only from being a stockholder or having interest in a *corporation* doing a ginning business. He may individually own a gin. The Act, therefore, is a clear discrimination between corporations and individuals engaging in the same business. An individual owning stock in an oil mill, or owning the oil mill or who is directly or indirectly interested in any compress is prohibited from becoming a stockholder, director or manager of a *corporation* doing a ginning business.

The Act provides that it shall be unlawful for any charter thereafter granted where the incorporators or any of them are owners, stockholders, or trustees or attorneys in fact for any cotton oil company or other concerns manufacturing cotton seed products for the purpose of operating any cotton gin, thus further discriminating corporations.

We submit that it has been abundantly settled by the decision of this Court that the discrimination between corporations and individuals engaging in the same business violates the 14th Amendment of the Constitution of the United States in that it is denial of the equal protection of the law. The Supreme Court of the State of Mississippi had expressly decided this in the case of *Ballard vs. the Oil Company*, 81 Miss. page 507. In that case a statute of the State of Mississippi which provided that corporations should be liable under certain conditions for injuries sustained by employees was unconstitutional because the same provision was not extended to individuals. What is the difference then between that statute and that under consideration which denies to corporations owning oil mills the right to operate or be interested in gins—but gives the right to individuals?

There is nothing shown and it cannot be shown that there is any essential difference in the business of operating oil mills and gins by individuals and the same busi-

ness carried on by corporations. The same processes are used and there is no difference between the object to be attained.

It was argued on the first hearing on the part of the State that the operation of oil mills and gins by corporations was affected with the public interest and thereby gave the right to regulate them, but nothing was pointed to show why the operation of oil mills and gins operated by individuals were any the less affected by the public interest. It is the character of the business which is the determining factor and not the character of the party carrying the business on, whether corporation or individual the business is the same.

This Court has frequently had before it the question of depriving parties due process and equal protection of the law in cases of classification, but in all the cases it will be found that the thought running through them all clearly is that the classification is not to be made except upon a difference between the business of those favored and the business of those not favored. There must be a substantial difference in the busines to warrant classification and imposition of burdens upon *one class and not upon another class of person or corporations doing the same business.*

We will call the Court's attention to some of the cases in which it has clearly announced that principle:

CLASSIFICATION AND DISCRIMINATION.

Nothing is better settled than that a state may in the proper exercise of its police power classify persons and corporations and impose burdens or restrictions upon one class that is not imposed upon another, but the power of classification is limited.

A classification cannot be defended upon the ground that it is done under the police power. All of the powers exercised by the sovereign in the regulation of persons and corporations are derived from the police power.

This right, as we have said before, has always existed. It is not a conferred power, but a power inhering in the sovereign and inalienable. The exact limits of this power have never been defined, but the rule is laid down in Thompson on Corporations, paragraph 424, as follows:

> "The courts are generally agreed that there are two limitations upon the police power of the state: (a) that the subject of its exercise must have some relation to the peace, the health, the safety, the good order, or the morals of the community; (b) that it must be exercised, either apparently or presumptively, upon grounds which are reasonable and necessary. * * * As a general proposition, it may be stated, it is the province of the law making power to determine when the exigency exists, calling into exercise this power. What are subjects of its exercise is clearly a judicial question. There must necessarily be constitutional limitations upon this power."

Neither the police power nor the reserved power to alter and amend a charter can justify a classification which is violative of constitutional provision.

One of the leading cases of this Court on the subject of classification is the case of *Gulf C. & S. F. R. R. Co. vs. Ellis*, 165 U. S. page 150, 41 Law Ed. page 668, the Court said:

> "But it is said that it is not within the scope of the 14th Amendment to withhold from states the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, yet it is equally true that such classification cannot be made arbitrarily * * * That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbi-

trarily and without any such basis. * * * Classification for legislative purposes must have some reasonable basis upon which to stand. * * * In *Vanzant vs. Waddel*, 2 Yerger 260, 270, Catron, J., speaking for the Supreme Court of Tennessee, declared: 'Every partial or private law which directly proposed to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community who made the law, by another.'" * * *

In *Stratton vs. Morris*, 89 Tenn. 497, Braxter, Special Judge, reviewing at some length cases of classification, closes the review with these words:

"We conclude, upon a review of the cases referred to above, that, whether a statute be public or private, general or special in form, if it attempts to create distinctions and classifications between the citizens of this state, the *basis of such classification must be natural and not arbitrary.*"

This case is referred to in numerous decisions passing upon the question of classification.

In the case of the *Southern R. R. Co. vs. Greene*, 216 U. S. 400, 54 Law Ed. at page 541, the Court said:

"While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some *real and substantial distinction, bearing a reasonable and just relation* to the things in respect to which such classification is imposed", citing numerous cases.

In the case of *Cotting vs. Godard*, 183 U. S. 97, 46 Law Ed. at page 107, an attempt was made to classify stock yard companies, the classification being based upon

the volume of business. The Court held that this classification was unconstitutional. The Court said:

> "The 14th Amendment, in declaring that no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of *any one except as applied* to the same *pursuits by others under like circumstances;* that no greater burdens should be laid *upon one than are laid upon others in the same calling and condition,* and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. * * * Arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this."

In the case of *Connolly vs. Union Sewer Pipe Co.*, 184 U. S. 540, 46 Law Ed. 690, the question of classification was again fully considered, and the Court said:

> "No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. It is

apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment, and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground,—some difference which bears a just and proper relation to the attempted classification."

We deem it unnecessary to multiply cases. The question has been thoroughly thrashed out by the Supreme Court of the United States in the cases cited and the other cases referred to in the opinions. It will be seen, therefore, that whether the power which was sought to be exercised in the Act under consideration is sought to be justified either upon the exercise of the police power or under the reserved power to alter, amend and repeal charters or under the general powers in the state to regulate corporations and businesses affected by the public interest, the power must be reasonably exercised. It must be necessary for the protection of the public, and if a classification must not be arbitrary, but it must be based upon some natural difference which bears a proper and just relation to the classification sought to be made.

In the case of *Connolly vs. Union Sewer Pipe Company* above referred to, this Court says:

"It is impossible to conceive why a like combination in respect to agricultural products and live stock are not also hurtful to the public interest and should be suppressed."

We might say in reference to the case at bar, that it is impossible to conceive why a combination of capital of individuals owning oil mills and owning and operating gins would not be just as hurtful to the public interest as the same business carried on by corporations.

This Court in the Connolly case says:

> "No greater burden should be laid upon one than is laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses." Citing *Barbier vs. Connolly*, 113 U. S. 2731, 28 Law Ed. 923, 924. This language is cited with approval in *Yick Wo vs. Hopkins*, 118 U. S. 356, 369, 30 Law Ed. 220, 226, in which case it is said: 'The equal protection of the laws is a pledge of the protection of equal laws.' See also *Pembinia Silver Mining Co. vs. Penn.* 135 U. S. 189, 31 Law Ed. page 653."

In the Connolly case, there was an attempt made to exempt farmers from the operation of the anti-trust law of Illinois. The Court said:

> "Two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicine, are under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves or others in the sale of their goods or merchandise; but their neighbors, who happen to be agriculturalists and live stock raisers, may make combinations of that character in reference to their grain or live stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws?"

Can we not say then with equal confidence, under what permissible rule of classification can such legislation as the Act of 1914 be sustained as consistent with the equal protection of the laws, where individuals owning oil mills or renting or leasing oil mills are given a perfectly free hand as to the owning and operating of

gins, when their neighbors who happen to be a corporation is denied this right and subjected to penalties to which the individual is not subjected for doing the same thing?

See further the following additional Federal cases on this point:

Gulf C. & S. F. R. R. vs. Ellis, 165 U. S. page 150, 41 Law Ed. page 668;

Santa Clara County vs. S. P. R. R. Company, 118 U. S. 394, 30 Law Ed. 118;

Pembina Consolidated Silver Mining Company vs. Pennsylvania, 125 U. S. 181, 189, 31 Law Ed. 650, 654;

Mo. Pac. R. R. C. vs. Mackie, 127 U. S. 205, 32 Law Ed. 107;

Minneapolis & St. P. R. R. Co. vs. Herrick, 127 U. S. 210, 32 Law Ed. 109;

Minneapolis & St. P. R. R. Co. v. Beckwith, 129 U. S. 26, 32 Law Ed. 585;

Charlotte C. & A. R. Co. vs. Gibbs, 142 U. S. 386, 35 Law Ed. 1051;

Covington & L. Turnpike Co. vs. Sandford, 164 U. S. 578, 41 Law Ed. page 560.

In the case of *Gulf C. & S. F. R. R. Co. vs. Ellis, supra,* the Court said:

> *"The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A state has no more power to deny to corporations the equal protection of the law than it has to individual citizens."*

In the case of *Pembina Consolidated Silver Mining Co. vs. Pennsylvania,* 125 U. S. page 189, 31 Law Ed. page 653, the Court said:

> "The inhibition of the amendment: that no state shall deprive any person within its jurisdiction of the equal protection of the laws, was designed to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation. Under the designation of persons there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name, and have a succession of members without dissolution."

But we do not deem it necessary to go further in the discussion of this thoroughly settled proposition which cannot be questioned in any way.

The Supreme Court of the State of Mississippi has clearly recognized the principles for which we are here contending. In the case of *Ballard vs. the Oil Company,* 81 Miss. 507, the Court had in consideration an Act of the Mississippi Legislature which was applied by its terms to corporations only. The Court said:

> "Our conclusion, after the most careful and protracted consideration, is that Section 1 of the Act of 1898 (Acts of 1898 page 85 Chapter 66), violates the fourteenth Amendment of the Constitution of the United States in that it imposes restrictions upon all corporations, without reference to any difference arising out of the natures of their businesses, which are not imposed upon natural persons, and thus denies to corporations the equal protection of the laws."

Nothing is better settled than that the power to regulate does not carry with it the power to destroy, or to

take from the corporation its property without due process of law, or to deny to the corporation the equal protection of the laws.

Smyth vs. Ames, 169 U. S. 466;

Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362.

In the last case the Court said:

To reserve the power to alter and amend charters, which is reserved by the Constitution of the State, does not in any way affect the principles which we are contending here.

Lakeshore Railroad Company vs. Smith, 173 U. S. 684, 43 L. Ed. 861;

Shields vs. Ohio, 95 U. S. 225;

Cook on Corporations, Section 501, page 1314;

Thompson on Corporations, Vol. 1, paragraph —.

Two propositions seem to be well settled by the authorities. The first is that the reserved power to alter, amend or repeal a charter is in subordination to the fourteenth Amendment of the Constitution of the United States and other constitutional provisions for the protection of property and property rights and guaranteeing equal protection of the law. The second is that the amendment must be consistent with the scope and object of the Act of incorporation.

THE DECREE.

The case must be reversed because the decree which is drawn in conformity with the Act denies the right of the Oil Company to do business in the State of Mississippi. The State could not forbid the Oil Company carrying on its interstate commerce in the State of Mississippi. See case of *Telegraph Company vs. Kansa, supra.*

We insist therefore,

First: The Act is unconstitutional because it denies to the Oil Company the equal protection of the law in that it discriminates between corporations and natural persons or individuals engaged in the same business and under the same circumstances and conditions, and confiscatory.

Second: Because the decree of the court below applying the Act to the Oil Company is to burden and destroy its interstate commerce.

Third: The decree on its face is erroneous because it denies to the Oil Company the right to do business in the State of Mississippi, the Oil Company being engaged strictly in interstate commerce.

Respectfully submitted,

A. W. SHANDS,
J. B. HARRIS,
For Plaintiff in Error.

APPENDIX.

CHAPTER 162.

SENATE BILL No. 160.

AN ACT to prohibit cotton oil companies and cotton compress companies, and other persons, associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton seed products and by-products and compresses from owning, buying, leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties, and for other purposes.

Corporations engaged in working cotton products not to own cotton gins or control same; stockholders of such companies likewise prohibited.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That it shall be unlawful for any corporation created under the laws of this State, or authorized to do any local business in the State under the laws thereof, to own, buy, lease, rent or otherwise acquire any cotton gin or any interest therein or to manage, use, control or operate the same, where such corporation is now, or may hereafter become interested in, the operation, ownership, management, control, or participate in the manufacture of any cotton seed oil, or any of its products or by-products; or in the manufacture of cotton seed meal, hulls or other cotton seed products and by-products, or which owns, operates, manages or in any manner controls or has any interest in any compress business concern, or corporation; nor shall any person who is interested in any cotton seed oil company or cotton seed meal manufacturing company, either in person or as trustee, directly or indirectly, or who is directly or indirectly interested in any compress, be or become a stockholder or director or manager of any corporation doing a ginning business, or have the management and control of such gin as trustee or otherwise; and it shall be unlawful for any charter to be hereafter granted

where the incorporators or any of them are owners or stockholders, or trustees or attorneys in fact for any cotton oil company or any cotton concern manufacturing cotton seed products above mentioned, for the purposes of operating or running any cotton gin.

Oil mills may own gins of limited capacity in certain cases.

Provided that any cotton seed oil company or compress may operate ginneries of the capacity of not exceeding six hundred saws, but such ginneries must be located in the city or town of the location of its cotton oil plant or compress and such ginneries shall not be operated for the purpose of destroying the gin business; and provided further that any natural person who may own a gin and do the ginning for himself and tenants and not for the public may own stock in or be a director in a cotton oil company.

Penalty for operating gins in violation of this act.

That any person or corporation of this State, or doing business in the State under the laws thereof, who shall operate a cotton gin in violation of the laws of this State shall be subject to a penalty of not less than one hundred dollars nor more than five thousand dollars, to be recovered at the suit of the State by attachment in the chancery court, and in addition the corporation shall forfeit its charter if a domestic corporation, and its right to do business in this State if a foreign corporation.

Companies owning gins to dispose of same in reasonable time.

A concern prohibited by this act from owning or operating gins is at liberty to dispose of said gins for cash or credit within a reasonable time after the passage of this Act and to operate such gins until sold within such time.

SEC. 2. That all laws and charter provisions in conflict with this Act be, and the same are hereby, repealed.

SEC. 3. That this Act take effect and be in force from and after its passage.

Approved March 28, 1914.

No. [redacted]41

In the Supreme Court of the United States

OCTOBER TERM, 1920.

CRESCENT COTTON OIL COMPANY,
Plaintiff in Error,

vs.

THE STATE OF MISSISSIPPI

WRIT OF ERROR FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI, DEFENDANT IN ERROR.

TUCKER PRINTING HOUSE, JACKSON, MISS.

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BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI, DEFENDANT IN ERROR.

STATEMENT.

The State of Mississippi, on the relation of the Attorney General, filed a complaint in the Chancery Court of Sunflower County, Mississippi, in 1915, against the Crescent Cotton Oil Company, of Memphis, Tennessee, and C. E. Shelton, local manager of one of said corporation's gins, located in Sunflower County, Mississippi. The bill alleges that the Oil Company was a corporation created under the laws of Tennessee, and engaged in operating an oil mill at Memphis, in said State, and that it also did a ginning business at numerous points in the State of Mississippi, and more particularly at Ruleville, in said State; and that C. E. Shelton was the manager of said local gin. That the corporation

was not operating an oil mill in the State of Mississippi, but was operating a gin and that the operation of the gin was in violation of Chapter 162 of the Laws of 1914, being "An Act to prohibit cotton oil companies and cotton compress companies, and other persons, associations and corporations engaged in the business of manufacturing or refining cotton seed oil and its products, and making or manufacturing cotton seed meal and other cotton seed products and by-products and compresses from owning, buying, leasing or operating any cotton gin in this State, or from selling cotton bagging, cotton ties, and for other purposes."

This Act was approved March 28th, 1914, and became effective from and after its passage.

The bill properly alleges the facts bringing the said corporation within the terms of the Act.

The Complainant further alleges that the charter of the Crescent Cotton Oil Company conferred no power on it to own, lease, operate or acquire cotton gins, and that under the laws of Tennessee a corporation could only do those things which it was given power to do in its charter, and that it could do no more in the State of Mississippi.

The pertinent part of such charter (Tr., 16) is as follows:

> "Organized for the purpose of manufacturing oil and meal and lint from cotton seed and for manufacturing into numerous forms the said oils or the said meal or lint or any part thereof, and for the purpose of buying and selling cotton seed or the products thereof, and for dealing in such utensils and machinery as may be proper and appropriate for the manufacture, handling, growth and manipulation of cotton or cotton seed, and the products thereof."

It is alleged that more than a reasonable time has expired since the passage of the said Act, in which to dispose of the gin plants in Mississippi for cash

or credit, and that a *bona fide* offer of more than the fair value has been made for the gin plant at Ruleville, in the State of Mississippi, and that this offer was refused, and that said Oil Company refused to fix any price whatever for the said gin plant.

The bill further alleges that the Oil Company, through its local manager, Shelton, at Ruleville, Mississippi, was engaged in an attempt to monopolize the gin business, and had been so engaged on the date the Act was approved, and previous thereto; and that since March 28th, 1914, the ownership and operation of a gin by an oil mill has been made a violation of the laws of the State of Mississippi.

It is also alleged that the Oil Company operated its gin at Ruleville, Mississippi, under the fictitious name of "Farmers' Gin Company," for purposes of deception as to the actual ownership of the gin property.

An attachment in Chancery, and an injunction to restrain further operation of said gin, was prayed for; also, that the said corporation be enjoined from doing a local business in Mississippi, and for penalties. Writs of attachment and injunction were issued and served on the defendant.

Defendant's answer (Tr., 10) is substantially as follows:

That the Act is void, because the Company had invested in property in this State prior to the passage of the statute, and to prevent the use of this property by the defendant would be to deprive the defendant of its property without due process of law.

That the Act denied to defendant the equal protection of the law, guaranteed by the Constitution of the State of Mississippi, and of the United States, in that a corporation engaged in the oil mill, or compress business cannot own or operate a gin, while an individual engaged in the same business is only denied the right to become interested in a corporation gin. And the defendant denies that its charter

does not confer upon the corporation the right to operate gins.

The Chancery Court entered a decree dismissing the bill, and on appeal to the Supreme Court of Mississippi, this decree was reversed, and the cause remanded for a hearing on its merits by the Chancellor. The opinion of the Court is found on page 25 of the Transcript.

On this second hearing, the defendant amended its answer, alleging that prior to, and at the time of, the passage of the Act under review, the Oil Company was engaged in the operation of a cotton oil mill at Memphis; and that the gin was operated in Mississippi only for the purpose of procuring seed for the oil mill situated in Tennessee; and that ownership and operation of said gin was a means and instrumentality made use of by defendant in carrying on its business of cotton seed buyer, and interstate shipper of cotton seed,—that the operation of the gin was a necessary incident thereto, and that to deprive defendant of such right would greatly burden and destroy its business of interstate commerce in the shipment of cotton seed from the State of Mississippi, into the State of Tennessee, and in conflict with the clear purpose of the clause of the Federal Constitution.

The opinion of the Supreme Court of the State of Mississippi (Tr., 119) substantially sets out the testimony in the case, and is included in this brief as an appendix.

The Chancellor decreed that the defendant had violated the Anti-Gin Statute, and also Anti-Trust Law of Mississippi, imposed a fine of $1900.00 for violating the Anti-Gin Statute, and a fine of $100.00 for violating the Anti-Trust Statute.

The decree further provided (Tr., 112) "That the said Crescent Oil Company be and the same is hereby perpetually enjoined from doing an intrastate or local business in the State of Mississippi, and its right to do such intrastate or local business in

this State be and the same is hereby forfeited, and the defendant is perpetually enjoined from a violation of the Anti-Trust Statutes of the State of Mississippi."

On the second hearing of this case in the Supreme Court of the State of Mississippi, from which this Writ of Error is prosecuted, the Supreme Court of Mississippi affirmed the decree of the lower Court, except as to the Anti-Trust feature, which part of the decree was reversed.

ARGUMENT.

FIRST: Public ginning is subject to regulation under the police power of the State.

The Act in question (Ch. 162, Laws of Mississippi, 1914) was passed in aid of the Anti-Trust Laws of the State, the main purpose being to prevent a monopolization of the gin business by the oil mills of the State, and the consequent reduction in the price of cotton seed throughout the State.

This Court has held, in the case of *Wilson v. New*, 243 U. S., 332; 37 Sup. Ct. Rep. 298; 61 L. Ed,. 755, that it was entirely proper for a Court to consider conditions which made the passage of a law necessary; and in that case the entire history of the circumstances leading up to the passage of the so-called "Adamson Law", was gone into by this Court.

In *U. S. v. Delaware & Hudson Co.*, 213 U. S. 366; 53 L. Ed., 836, the Court, speaking through Chief Justice White, said:

> "The relevant industrial conditions which, being matters of common knowledge, may be judicially noticed."

At the time of the passage of the Act under review, it was a matter well known to the Legislature that there was then a pending suit against various

oil companies operating in Mississippi because of a violation of our Anti-Trust Statute, "and that a large majority of the oil mills were engaged in an effort to crush out the independent gins in Mississippi, and thereby monopolize the buying of cotton seed in the State. Testimony was shown before the Senate and House Committees to the effect that oil mills were operating gins, and that where they had no competition were charging from $2.50 to $4.00 per bale for ginning, exclusive of labor; and that at competitive points the price of ginning was from $1.00 to $2.00, including labor. At other places the ginning was from $1.00 to $2.00, provided the seed was sold to the oil mill operating the gin; and was from $2.50 to $4.00 if the seed were sold to independents. In other places the ginning was done without cost, if the seed were sold to the oil mill operating the gin; whereas, a charge of $2.50 to $4.00 was made for ginning if the seed were taken away from the gin and sold to outside parties.

The consequence was that hundreds of gins in the State of Mississippi had been forced to go out of business during the period ranging from 1905, down to 1914." (Quoting from State's brief on first hearing before Mississippi Supreme Court).

The ginning of cotton for the public clothes such gins with a public interest which subjects it to governmental regulation under the police power of the State.

Tallassee Oil & Fertilizer Co., et al., v. Holloway, 76 So., 434, and authorities cited.

The leading case on the subject of when private property becomes so clothed with public interest as to make it of public consequence, is *Munn v. Ill.*, 94 U. S., 113; 24 L. Ed., 77.

Counsel for Plaintiff in Error, on the first appeal of this case in the Supreme Court of Mississippi, in his brief admitted that a public ginning business is subject to regulation by the State.

SECOND: Plaintiff in Error has no charter power to operate a gin in Tennessee, or elsewhere, and, therefore, cannot question the constitutionality of the statute under review.

This proposition lies at the very threshold of this case, and if it be disposed of adversely to Plaintiff in Error, no further question need arise in a proper determination of the controversy; so that it would not be necessary for this Court to consider the constitutionality of the Statute involved. If the Plaintiff in Error is without charter power to operate gins in Tennessee, or elsewhere, it necessarily follows that it is in no position to question the constitutionality of a Statute relative to the ownership of cotton gins.

The part of the charter that is pertinent to this point reads as follows:

> "Organized for the purpose of manufacturing oil and meal and lint from cotton seed and for the *manufacturing into numerous forms* the said meal or *lint or any part thereof*, and for the purpose of buying and selling cotton seed or the products thereof, and for *dealing* in such utensils as may be proper and appropriate for the *manufacture*, handling, growth and manipulation of *cotton* or *cotton seed* and the products thereof." (Italics ours).

It is confidently submitted that nowhere in these powers can it be said that the Crescent Oil Company is authorized to operate a gin.

The corporation is authorized in this charter, amongst other things, to manufacture "lint or any part thereof." The process of ginning is that the seed cotton—that is, cotton just as it is picked from the plant, with the seed and cotton still interwoven and intact—is taken to the gin, removed from the wagon by suction conveyor, then into the ginning machinery, where the seed are separated from the cot-

ton,—the lint cotton going to the baling press, and the seek back into the wagon, or into the seed house. There is no such thing as lint cotton until *after* the seed cotton has been ginned, and the seed removed from the seed cotton.

The charter in question does authorize the manufacture of lint cotton into such forms as Plaintiff in Error might desire. This charter would authorize the manufacture of lint (lint cotton), I take it, into cloth or any other commodity which uses lint cotton in its manufacture. But the act in question, to-wit, ginning, must first be done and concluded before there is lint cotton to manufacture,—an entirely separate and distinct operation.

"Manufacturing * * * * lint from cotton seed" is another separate and distinct operation from the ginning of cotton, and arises after the seed cotton has already been ginned. In fact, the separation of lint from cotton seed is, in most cases, never done at a cotton gin. This operation of separating the lint from cotton seed, and obtaining thereby seed and "linters," is a necessary part of the machinery of an oil mill. Before the seed are hulled and ground in an oil mill, the seed which have been obtained by the oil mill are taken through special gin machinery, by which all the remaining lint is removed from the seed, and a by-product, "linters," is obtained. These "linters" are principally used in the manufacture of explosives.

It seems clear, therefore, that the charter in question certainly does not, expressly or impliedly, authorize the ginning of cotton seed, the operations which are authorized as to the manufacture of lint or any part thereof, or manufacturing lint from cotton seed, being entirely separate and subsequent operations, disassociated from, and disconnected with the ginning of seed cotton.

It may be urged by Plaintiff in Error that the charter power to gin seed cotton is a necessary incidental power to an oil mill. It is a fact of com-

mon knowledge, as well as a part of the record in this case, that it is not necessary to operate a gin in connection with an oil mill or compress. In fact, scores of oil mills in the State of Mississippi and elsewhere, are operated without having a cotton gin for ginning seed cotton as a part of its plant. Seed may be, and are, purchased in the open market, so that it is not necessary to operate a gin in order to obtain the seed, with which to do one of the things authorized in the charter, to-wit, the manufacture of lint cotton.

The rule is that a charter only confers such *incidental powers as are necessary to carry out the powers expressly conferred.*

The rule is stated in the note to *Huntington v. Savings Bank*, 96 U. S., 388; 24 L. Ed., 777, to be:

> "A corporation, being a mere creature of the law, possesses only those properties which the charter confers upon it, either expressly or as incidental to its very existence. Corporations have only the powers specifically granted by the Act of incorporation, or such as are necessary for the purpose of carrying into effect the powers expressly granted."
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> *Dart. Coll. v. Woodward*, 17 U. S., (4 Wheat.) 518.

The ginning of seed cotton is neither a necessary part of an oil mill, nor a right incidental to a charter granted to operate an oil mill; and, therefore, it must follow that under the charter the Plaintiff in Error had no charter power, express, implied or incidental, to operate a cotton gin in Tennessee, or elsewhere. It cannot be contended that "Dealing in such utensils and machinery as may be proper and appropriate for the manufacture," etc., gives the Oil Company the power to operate machinery which will separate the cotton seed into lint cotton and seed. "*Dealing*" is the participle of the verb "*deal*" and the noun "*dealer.*" A *dealer*, in the

statutory sense of the word, is not one who buys to keep, or makes to sell,—but one who buys to sell again. In other words, *dealing,* in this charter, only gives Plaintiff in Error the right to engage in the *buying and selling* of machinery of the kind mentioned in such charter. Bouvier's Law Dictionary, Vol. 1, 775; Words and Phrases, 2 Ed., Vol. 1, 1223.

The Plaintiff in Error, not being authorized to operate a cotton gin, cannot, therefore, question the constitutionality of a Statute relative to a business in which a corporation has no right or authority to engage.

Louisville & Nashville v. Finn, 235 U. S., 601; 59 L. Ed., 379.

THIRD: A State has the right to expel a foreign corporation after it has entered and commenced doing business therein, provided no right guaranteed by Federal Constitution is denied.

The State of Mississippi has plenary control over domestic corporations, as is evidenced by the Constitution of Mississippi:

> "*Section 178.* Corporations shall be formed under general laws only. The Legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so. Provided, however, *that no* injustice shall be done to the stockholders. No charter for any private corporation for pecuniary gain shall be granted for a longer period than ninety-nine years," etc.

Section 914, Code 1906 (Sec. 4088, Hemingway's Code), is as follows:

"Section 914. *Of foreign corporations.*—Corporations which exist by the laws of any other State of the Union, by the Acts of Congress, or the laws of any foreign country, may sue in this State by their corporate names, and they shall also be liable to be sued or proceeded against, by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against. And the acts of the agent of any such foreign corporation shall have the same force and validity as the acts of agents of private persons; *but such foreign corporations shall not do or permit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy.*" (Italics ours).

The power to regulate public ginning of cotton is the putting into effect the public policy of the State as oil mills, compresses and gins. The Legislature, with the knowledge which it had of existing conditions, believed that it was contrary to the public welfare of the State of Mississippi for an oil mill or a cotton compress, to own and operate a cotton gin. The States have full power to regulate, within their limits, matters of internal policy, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of their people.

Esconaba Co. v. Chicago, 107 U. S., 678; 27 L. Ed., 442.

Hadacheck v. Sebastian, 239 U. S., 394; 60 L. Ed., 348.

Barbier v. Connolly, 113 U. S., 27; 28 L. Ed., 923.

The right of a State to exclude a foreign corporation from its borders, so long as no principle of the Federal Constitution is violated in such exclusion, has been repeatedly recognized in the decisions

of this Court, and the right to prescribe conditions upon which a corporation of that character may continue to do business within the State, unless some contract right in favor of the corporation prevents, or some constitutional right is denied in the exclusion of such corporation, is but the correlative of the power to exclude.

Hammond Packing Co. v. Arkansas, 212 U. S., 322; 53 L. Ed., 530.

Baltic Mfg. Co. v. Mass., 231 U. S., 83; 58 L. Ed., 133.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass., 35.

Fire Ass'n. of Phila. v. N. Y., 119 U. S., 110; 30 L. Ed., 342.

So. Bldg. & Loan Ass'n. v. Norman, 98 Ky., 314; 56 Am. St. Rep., 373; 32 S. W., 954; 31 L. R. A., 43.

Nat. Council U. A. M. v. St. Council, 203 U. S., 151; 51 L. Ed., 132.

R. R. Co. v. State, 107 Miss., 597; 65 So., 881.

In *Paul v. Virginia,* 8 Wall., 168; 19 L. Ed., 357, on page 360, the Court said:

> "Having no absolute right of recognition in other States, but depending for such recognition upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. *They may exclude the foreign corporation entirely,* they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests within their discretion." (Italics ours).

FOURTH: Property acquired prior to passage of the Act does not deprive the State of its power to regulate and exclude under the police power.

This point was most seriously argued by the Oil Company on the first appearance of this case in the Supreme Court of Mississippi, but in brief of Plaintiff in Error in this Court it has received only casual attention.

If the State does not have this power, the result would be total stagnation in the regulation and control of foreign corporations doing business in this State, since such control would be limited by the public policy as existing at the time such corporation entered and commenced doing business in the State. The logical sequence of such a situation would be that the State could not then control domestic corporations under a progressive and changing public policy, for the reason that the domestic corporations would then be discriminated against in favor of a foreign corporation. The Crescent Cotton Oil Company came into Mississippi with a knowledge of Section 914 of the Code of 1906 (Sec. 4088, Hemingway's Code), above set out.

That there can be no merit in the proposition that the property being legally acquired prior to the passage of this Act, the State, therefore, could not regulate and exclude such corporation, under its police power, is conclusively shown by decisions of this Court.

U. S. v. Delaware & Hudson Co., 213 U. S., 366; 53 L. Ed., 836.

U. S. v. Reading Co., et al., 226 U. S., 324; 57 L. Ed., 243.

Delaware L. & W. R. R. Co. v. U. S., 231 U. S., 363; 58 L. Ed., 269.

FIFTH: Application of Chapter 162, Laws of 1914, of the Mississippi Legislature, to Plaintiff in Error, prohibiting it from owning and operating a cotton gin in this State for the purpose of more easily procuring cotton seed for its oil mill in Memphis, Tennessee, is not to burden or destroy its interstate commerce.

(1) *Ginning is manufacturing.*

The Mississippi Supreme Court definitely decided that ginning is manufacturing seed cotton into lint cotton. (Tr. 123).

In *Friday v. Hall & Kaul*, 216 U. S., 449; 54 L. Ed., 56[illegible] the Court, speaking through Justice Lurton, said:

> "'Manufacturing' has no technical meaning. It is not limited by the means used in making, nor by the kind of product produced. In *Kidd v. Pearson*, 128 U. S., 1, 20; 32 L. Ed., 346, 350; 2 Ints. Com. Rep. 232; 9 Sup. Ct. Rep. 6, Mr. Justice Lamar said that, 'Manufacturing is transformation—the fashioning or raw material into a change of forms for use.'"

In *State v. Am. Sugar Refining Co.*, 108 La., 603; 32 So. [illegible]5, it was held that the refining of raw sugar was manufacturing. The opinion of the Court in that case contains an exhaustive discussion of the meaning of the word "Manufacture," and a collation of the authorities on the subject of what constitutes manufacture.

(2) *Manufacturing is not a part of interstate commerce.*

Brief of Plaintiff in Error (p. 13) states their position on this point as follows:

> "We are not insisting that ginning or manufacturing is interstate commerce, but we are insisting, in the light of the decisions of this

> Court, to which we call attention, that the operation of a gin was a necessary incident, and was absolutely necessary and essential to its carrying on that business successfully, and to deny to it the right to operate a gin was to greatly burden its interstate commerce directly, and, in fact, to destroy it, and not only that, but to *affect the operation of and to burden the business carried on by it in the State of Tennessee.*"

This position admits that ginning *is* manufacturing, and that *it is not* interstate commerce.

Plaintiff in Error contends, however, that ginning is a necessary incident to the operation of the oil mill, and absolutely necessary and essential to carry on that business successfully; and that to deny the Oil Company the right to operate the gin is to directly burden its interstate commerce, and in fact, to destroy it.

The contention that the operation of the gin is a necessary incident to the successful carrying on an oil mill business, is completely controverted by the fact that, scores of oil mills in the State of Mississippi have complied with the Act under review, and are still conducting the business of an oil mill successfully. A few oil mills have been compelled by court proceedings to comply with Chapter 162 of the Laws of 1914, and these corporations are still successfully doing an oil mill business. It is also true that many oil mills never, at any time, owned and operated cotton gins.

This would seem to dispose of the contention that the operation of a cotton gin is a *necessary* incident to the operation of an oil mill.

Plaintiff in Error, by its statement of contention, admits that the Act would be valid unless it *directly* burdens its interstate commerce.

Manufacturing corporations, and all other corporations whose business is of a local or domestic nature, are subject to the control of the State.

Crutcher v. Ky., 141 U. S., 47; 35 L. Ed., 649.

An examination of some cases wherein a similar contention has been made, that the business was so related to interstate commerce as to deprive the State of the right of regulation and control, will demonstrate conclusively to this Court that the proposition advanced by Plaintiff in Error in the instant case is unsound.

In *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S., 617; 47 L. Ed., 333, this Court had under consideration a Wisconsin statute which required foreign corporations to file a copy of the charter with the Secretary of State, and to pay a small fee as a condition of doing business there. The plaintiff made a contract with the defendant, in which it was agreed that the plaintiff should supervise a glue factory, to be built by the defendant; that the plaintiff should have the management of the manufacturing in the same; that, amongst other things, it should control, handle and sell the output of the factory. It was said in that case (as it is in the case at bar) that the contract in suit, as carried out, was concerned, in part, with interstate commerce, and, therefore, was free from the operation of the Wisconsin statute. Justice Holmes, speaking for the Court, said:

> "The portion of the contract that called for the carrying on of business in Wisconsin was not so concerned, and the inseparable provisions as to selling left it to chance or to extrinsic business considerations whether the contemplated traffic should go outside the State or not. The foundation of the commerce outside the State was doing business within it. The superintendence and manufacture had to come before the sale. * * * * The interference with the regulation of commerce between the States is more remote than when a bridge between two States, or the franchise of a domestic corpor-

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ation created with the intent to carry on such commerce, is taxed. See *Henderson Bridge Co. v. Henderson*, 173 U. S., 594, 622, 623; L. Ed., 823, 834; 19 Sup. Ct. Rep., 553; *Central P. R. Co. v. Cal.*, 162 U. S., 91, 119, 125, 126; 40 L. Ed., 903, 913, 915; 16 Sup. Ct. Rep., 766. In modern societies every part is related so organically to every other that what affects any portion must be felt more or less by all the rest. Therefore, unless everything is to be forbidden and legislation is to come to a stop, it is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts. Practical lines have to be drawn, and distinctions of degree must be made. See, further, *Kidd v. Pearson*, 128 U. S. L., 21; 32 L. Ed., 346; 2 Inters. Com. Rep. 232; 9 Sup. Ct. Rep. 6; *Coe v. Errol*, 116 U. S. 517, 525, 527; 29 L. Ed. 715, 718; 6 Sup. Ct. Rep. 475; *Tredway v. Riley*, 32 Neb. 495; 49 N. W. 268."

The right of a State to prescribe generally, and by its Constitution and laws, the terms upon which a corporation shall be allowed to carry on its business in the State, has been settled by this Court.

Cooper Mfg. Co. v. Ferguson, 113 U. S., 727; 28 L. Ed. 1137.

Bank v. Earle, 13 Pet. 519; 19 L. Ed., 274.

Paul v. Va., 8 Wall., 168; 19 L. Ed., 357.

Ducat v. Chicago, 19 Wall., 410; 19 L. Ed., 972.

In the Cooper case, supra, the concurring opinion, while agreeing with the majority opinion in result, based the conclusion on the ground that the Colorado statute was an interference with interstate commerce. In this state of the case, the concurring Justices said:

"It is quite competent, no doubt, for Colorado to prohibit a foreign corporation from acquiring a domicile in that State, and *to prohibit it from carrying on in that State its business of manufacturing.*" (Italics ours).

"Carrying on interstate commerce" does not include manufacturing and trading companies making interstate shipments. Judson on Interstate Commerce, Sec. 15.

Tredway v. Riley, 32 Neb., 495; 49 N. W., 268.

"The business of a manufacturing company, although the manufactured product is sold in another State and foreign countries, is not interstate commerce. *Kidd v. Pearson,* 128 U. S., 1; 32 L. E., 346; *U. S. v. Knight,* 156 U. S., 1; 39 L. Ed. 325."

Judson on Interstate Commerce, Sec. 7.

Judson on Interstate Commerce, Section 315, in discussing the Anti-Trust Act of 1890, as interpreted by the Court in *U. S. v. Knight,* 156 U. S., 1; 39 L. Ed., 328, says:

"The Court said that the monopoly and restraint denounced by the Act were the monopoly and restraint of interstate trade and commerce. Manufacture was not commerce. Commerce succeeded to manufacture, and was not a part of it, and sale is an incident of manufacture, therefore distinguished from commerce."

That this eminent author understood correctly the decision is clearly shown by an excerpt from the opinion, wherein the Court, speaking through Chief Justice Fuller, said:

"Doubtless the power to control the manufacture of a given thing involved in a certain sense the control of its disposition, but this is a *secondary and not a primary sense*; and al-

> though the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it." (Italics ours).

Capital City Dairy Co. v. Ohio, ex rel. Atty Gen., 183 U. S., 238, 46 L. Ed., 171, involved the validity of a statute of the State of Ohio in regard to the manufacture of oleomargarine. The answer of the defendant, amongst other things, alleged that:

> "All the oleomargarine thus manufactured during the period stated, was made, not for sale in the State of Ohio, but for sale in other States, and was wholly sent out of the State of Ohio to such other States; that the statutes * * * * were repugnant * * * * to Section 8 of Article 1 of the Constitution of the United States * * * *."

In passing upon this contention, this Court, speaking through Chief Justice White, said:

> "The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All of the acts of the corporations which were complained of related to oleomargarine *manufactured by it in the State of Ohio in violation of the law of that State, and therefore operated on the corporation within the State, and affected the product manufactured by it before it had become a subject of interstate commerce. Kidd v. Pearson*, 128 U. S. 1; 32 L. Ed. 346; 9 Sup. Ct. Rep. 6; 2 Inters. Com. Rep. 232; *U. S. v. E. C. Knight Co.*, 156 U. S. 1; 39 L. Ed. 325; 15 Sup. Ct. Rep. 249." (Italics ours).

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to con-

trol the States in their exercise of police power over local trade and manufacture.

Hammer v. Dagenhart, 247 U. S., 251; 62 L. Ed., 1101.

In *Hammer v. Dagenhart, supra,* the Court, in marking out the distinction between domestic commerce and interstate commerce, when products were manufactured in one State, and shipped into another, said:

"'Commerce consists of intercourse and traffic * * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped, or used in interstate commerce, make their production a part thereof. *Delaware, L. & W. R. R. Co. v. Yurkonis,* 238 U. S. 439; 59 L. Ed. 1397; 35 Sup. Ct. Rep. 902.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation. 'When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State.' Mr. Justice Jackson, *in re Greene,* 52 Fed., 113. This principle has been recognized often in this Court. *Coe v. Errol,* 116 U. S., 517; 29 L. Ed. 715; 6 Sup. Ct. Rep. 475; *Bacon v. Illinois,* 227 U. S., 504; 57 L. Ed. 615; 33 Sup. Ct. Rep. 299, and cases cited. If it were otherwise, all manufacture intended for

> interstate shipment would be brought under Federal control to the practical exclusion of the authority of the States,—a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd v. Pearson*, 128 U. S., 1, 21; 32 L. Ed. 346, 350; 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6."

Kidd v. Pearson, 128 U. S., 1; 32 L. Ed. 346, is one of the leading cases of this Court, distinguishing between manufacture and commerce. As was stated by the Court in that case:

> "If it be held that the term (meaning the regulation of commerce between the States) includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also apply to all progressive industry that contemplates the same thing. The result would be to invest Congress, to the exclusion of the State, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining—in short,—every branch of human industry. For is there one of them that does not contemplate more or less, an interstate or foreign market."

The Mississippi Supreme Court quoted so extensively from this case that, for the convenience of this Court, I am setting out as an Appendix to this brief, the opinion of the Mississippi Supreme Court on the second and final hearing of this cause.

Hammer v. Dagenhart, supra, seems to be on all-fours with the case at bar, and was extensively quoted from by the Supreme Court of Mississippi in this case (Tr., 125).

It only remains to briefly discuss the cases relied upon by Plaintiff in Error to sustain its contention that the regulation of cotton ginning by the State

constitutes a direct burden on the interstate commerce business of Plaintiff in Error. These cases are:

Pullman Palace Car Co. v. Kansas, 216 U. S. 68; 54 L. Ed., 386.

Western Union Tel. Co. v. Kansas, 216 U. S., 34; 54 L. Ed. 369.

Ludwig v. Western Union Tel Co., 216 U. S. 97; 54 L. Ed. 423.

Harrison v. R. Co., 232 U. S., 318; 58 L. Ed., 621.

These cases, in my judgment, throw no light upon the proposition before this Court. The cases all relate to corporations *directly* engaged for hire in the transportation of intelligence or commerce or persons between the States; and their capital invested in this business was of such a permanent and fixed nature that the local business was interstate commerce of a quasi-public character.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass., 35; 49 Ann. Cas. 1913 C, 805; 98 N. E. 1063.

As was stated by the Mississippi Supreme Court, it is to be noted that these cases are ones in which the principal business of the corporation was interstate business, though these corporations also did an intrastate business. While in the case at bar it is admitted by counsel for Plaintiff in Error that the ginning of cotton is not interstate commerce. The distinction would seem to be clear and compelling. It will be noted that the Harrison case in 232 U. S., is one holding that the right of a foreign interstate railroad company to remove the case to the Federal Court under proper circumstances, cannot be prohibited by a State statute.

The cases cited by counsel for Plaintiff in Error, are ample authority for the proposition that the burden must be *direct and primary*, and *not an incidental or secondary burden upon interstate commerce*, in order to be obnoxious to the Constitution.

On page 20 of the brief for Plaintiff in Error, this statement occurs:

> "It is conceded that the operation of the gin had become absolutely necessary to enable the company to carry on this business with success."

This is not conceded, and the State submits, with the utmost confidence, that the actual facts with reference to the operation of oil mills in the State of Mississippi at this time shows exactly the opposite to be true—that is, that it is not necessary, to carry on the oil mill business with success, to operate a gin.

On page 21 of their brief it is argued that the operation of a gin is necessary, and has been recognized by the Act itself, in allowing ginneries to be operated at the domicile of the oil mill or compress. The inference is not justified. The Legislature, having before it all the facts, evidently was of the opinion, and believed, that the evil to be remedied consisted in the operation and ownership of places other than, and apart from, the domicile of the corporation.

(3) *Purchase of seed is not interstate commerce; the ginning of seed is not interstate commerce. Interstate commerce begins when seed are delivered to carrier for shipment to another state.*

It will not be argued by counsel for Plaintiff in Error that the mere purchase of seed is interstate commerce; and it is expressly admitted in their brief that the ginning of cotton is not interstate commerce (Brief, 13). The Mississippi Supreme Court found, as a fact, that the purchase of cotton seed is one transaction; that the ginning of the seed cotton is another transaction; and that the shipping of these seed is still another transaction. (Tr. 123). It was necessary, according to the opinion of that Court, for the Plaintiff in Error to do three things, before interstate commerce began, namely, (1) pur-

chase the seed, (2) gin the cotton, (3) deliver the seed to the carrier for interstate shipment.

Many cases from this Court could be cited as sustaining the proposition that interstate commerce does not commence until delivery of the article to be transported to the carrier.

The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered or offered to be delivered, to the consignee.

> *Covington Stock Yard Co. v. Keith,* 139 U. S., 128; 35 L. Ed. 73.
>
> *U. S. v. Union Stock & Transit Co.,* 226 U. S., 286; 57 L. Ed. 226.

In the late case of *McCluskey v. Marysville & Northern Railway Co., et al.,* 243 U. S. 36; 61 L. Ed. 578, a logging railroad over which its owner carries its own logs, in its own cars, from its own timber land within the State, to a tidewater point, also within the State, where such logs are dumped into the water and sold, some of them going to points outside the State, and the balance were rafted and taken by tugs to the defendant's mill, where they were manufactured into timber, which was thereafter sold, both in local and foreign markets, was held not to be engaged in interstate commerce within the meaning of Employers' Liability Act.

Chief Justice White, delivering the opinion of the Court, quoted with approval from the leading cases of *Coe v. Errol,* 116 U. S. 517; 29 L. Ed. 715; 6 Sup. Ct. Rep. 475 and the Daniel Ball, 10 Wall., 557; 19 L. Ed. 999. We quote from the opinion:

> "The movement of the poles did not become interstate commerce until, by the act of the purchasers thereof, the poles were started on their way to their destination in another State or country. *The beginning of the transit which constitutes interstate commerce, 'is defined in*

Coe v. Errol to be the point of time that an article is committed to a carrier for transportation to the State of its destination, and started on its ultimate passage.' General Oil Co. v. Crain, 209 U. S., 211; 52 L. Ed. 754; 28 Sup. Ct. Rep. 475." (Italics ours).

Whether a shipment was at a given time in interstate commerce, is one of fact, and not of intention of the shipper.

So. Pac. Co. Arizona, 249 U. S. 472; 63 L. Ed. 713.

Arkadelphia Milling Co. v. St. Louis S. W. R. Co., 249 U. S. 134; 63 L. Ed. 517.

Judson on Interstate Commerce, Sec. 6.

(4) *Ultimate intention of manufacturer to ship manufactured article into another State does not constitute interstate commerce.*

This proposition has been clearly stated in *Keystone Watch Co. v. Commonwealth,* 212 Mass., 50. The Court said:

"Manufacture is the dominant business of the petitioner in this commonwealth. Incidentally, some kind of commerce to some extent may be necessary to the conduct of most manufacturing business, but it is subsidiary, rather than primary. *Kidd v. Pearson,* 128 U. S. 1, 20; *U. S. v. Knight,* 156 U. S. 1, 14. The maintenance here of the petitioner's plant in Massachusetts is for a distinct department of its manufacture. Although manufacture contemplates commerce, that is a subsequent stage. Its manufacturing business is entirely separable from the commerce which follows and which is involved in the sale of the product. *Baltic Mining Co. v. Mass.,* 231 U. S. 68; 58 L. Ed. 67."

If ginning of seed cotton be a necessary incident to the interstate commerce business of the Plaintiff

in Error, by the same reasoning it would necessarily follow that the farmer transporting the seed cotton from his farm to the gin would be engaged in interstate commerce; that the laborer who picked the cotton in the field, would also be engaged in interstate commerce; and that every person and operation of this cotton, to be ginned, and afterwards to be transported as a part of interstate commerce, would be a necessary incident thereto. This leads to the unthinkable situation whereby the State would be deprived of all control over its internal affairs.

It seems to me clear, from the record in the case, that there is, in a legal sense, no inextricable connection between the interstate and intrastate commerce of Plaintiff in Error. They are not so interwoven that they cannot be separated. Otherwise, every kind of business, when both interstate and domestic commerce are conducted, merely by reason of commingling, might be regarded as inseparable, Unless this is so, any discussion of the regulation of foreign corporations by the State would be idle, for it could all be avoided by conducting an interstate and domestic business at the same place. Simply because the interstate and intrastate commerce business may be conducted together more profitably or conveniently, does not render them inextricably interwoven, nor the one necessarily incident to the other.

S. S. White Dental Mfg. Co. v. Commonwealth, 212 Mass. 35.

SIXTH: The doctrine that a state may not, in any form, or under any guise, directly burden prosecution of interstate commerce is not infringed in Act under review.

(1) A state may, in a great variety of ways, affect commerce and persons engaged in it, unless it

imposes a *direct* burden upon interstate commerce, or *directly* interferes with its freedom.

Kidd v. Pearson, 128 U. S., 1; 32 L. Ed. 346.

(2) *The control of manufacture of a commodity involves, in a certain sense, the control of its disposition, but this is only in a secondary sense, and affects commerce only incidentally and indirectly.*

U. S. v. Knight, 156 U. S. 1; 39 L. Ed. 328.

(3) *There must be some point of time when the commodity will cease to be governed exclusively by domestic law and protected by the national law of commercial regulation, and the moment at which such commodity commences final movement for transportation from State of origin to that of destination is such determining point.*

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346.
Coe v. Errol, 115 U. S., 517; 29 L. Ed. 715.
Hammer v. Dagenhart, 247 U. S. 211; 62 L. Ed. 1101.

(4) *Cotton seed are blown into a seed house during the process of ginning, until a sufficient quantity be obtained to make a carload shipment, and then such seed are loaded into freight car, and thereby start as a part of commerce.*

The record in this case will disclose that seed cotton is brought to the gin, carried by a suction conveyor into the gin machinery, where the lint cotton is separated from the seed, and the cotton seed are then blown into a seed house, if the Gin Company has purchased the seed before the ginning operation began, otherwise they are conveyed to a trap, and, after the ginning operation is concluded, dumped into the farmer's wagon. These cotton seed houses are a necessary part of every gin, and the seed are there held until a sufficient quantity are in hand to be delivered to the carrier for shipment. Under the authorities heretofore cited, com-

merce does not begin until these seed are delivered to the carrier for transportation.

SEVENTH: Plaintiff in Error is not denied the equal protection of the law.

(1) *Same penalty in effect on both foreign and domestic corporations.*

It is argued in the brief of Plaintiff in Error that the Act in question is unconstitutional, in that is discriminates in favor of individuals as against corporations, by prohibiting corporations owning or being interested in an oil plant, from operating gins, while the individuals may own both oil mill and gin, except that the individual cannot be interested in a corporation gin.

There is no discrimination as to the penalty imposed by the Act. A fine may be imposed by either the foreign corporation or the domestic corporation. The foreign corporation may also be expelled from the State, whereas the domestic corporation has its charter forfeited.

(2) *The Legislature has a wide discretion in making classification for legislative purposes.*

Of course, any classification between classes or persons, if it be arbitrary, will be held to be invalid. The Legislature has a wide discretion in the matter of classification for legislative purposes.

Huggins v. Home Fire Insurance Co., 107 Miss. 650; 65 So. 646.

The classification of persons or property must be based on some reasonable ground, and some rule different from mere arbitrary selection, and discriminations against persons and classes, of unusual character, are unconstitutional. But this will not be presumed to have been arbitrarily done.

Adams v. Standard Oil Co. of Ky., 97 Miss. 879; 53 So., 692.

St. John v. N. Y., 201 U. S., 633; 50 L. Ed. 896.

Minn. Iron Co. v. Kline, 199 U. S. 593; 50 L. Ed., 322.

Gulf, etc. R. R. Co. v. Ellis, 165 U. S., 150; 41 L. Ed. 666.

(3) *A reasonable classification between corporations and individuals is valid and not contrary to the equal protection clause of the Fourteenth Amendment.*

Hammond Packing Co. v. Ark., 212 U. S. 322; 53 L. Ed. 530.

Standard Oil Co. v. Tenn., 217 U. S. 413; 54 L. Ed. 817.

Adams v. Standard Oil Co. of Ky., 97 Miss., 879; 53 So., 692.

The case of *Ballard v. Oil Co.*, 81 Miss., 507, is cited as an authority by Plaintiff in Error, that the classification between corporations and individuals, in the Act under review, is arbitrary, and, therefore, unconstitutional.

On the first appearance of this case in the Supreme Court of Mississippi, the Ballard case was argued at length, as an authority for this proposition. The Court evidently did not agree with the interpretation of counsel in that case. It is very clear to my mind that the statute in question in the Ballard case was held to be unconstitutional, because it applied to *all* corporations as against individuals, and the opinion of the Court was that the statute was unconstitutional, because the classification of *all corporations* was arbitrary, and that the classification should have been limited to railroads, and corporations in a similarly hazardous business.

The Ballard case has frequently been cited to the Mississippi Supreme Court, and that Court has never placed the same construction upon this decision as has been contended for by Plaintiff in Error.

In the Ballard case the Mississippi Court did not have under consideration the *power* of the railway company to do a railway business within the State. The exact question involved in the case before this Court is the *power* to prohibit a corporation from doing a certain particular business within the State, under its police power. The question of the equal protection of the law arose in the Ballard case because the railway company had the *power* to do the particular business; but in this case, the *power* is the thing that is exercised by the Legislature, and the equal protection of the law defense does not and cannot arise until the corporation has the *power* to do the particular act.

In the case of *Adams v. Standard Oil Co.*, 97 Miss., 879; 53 So., 692, that Court held that the classification between the Standard Oil Company, engaged in peddling, and the aged and impecunious, and physically disabled person, from paying a peddler's license, is based on existing conditions, founded on reason and justice, and not violative of the equal protection clause of the Federal Constitution. This case was a clear distinction between an individual and a corporation, each of whom was doing a peddling business. The Ballard case was cited as an authority for the unconstitutionality of that statute, but the Mississippi Supreme Court held that the Ballard case only decided that the classification must be reasonable, and not arbitrary.

EIGHTH: Due process of law defense relied on in first trial in Court below apparently abandoned here.

It will be noted that the main defense in the original answer was that of denial of due process of law. This was the principle point argued in the Supreme Court of Mississippi on the first hearing. This proposition is not specified in the present hearing, as error, and I therefore take it to have been abandoned .

NINTH: The decree does not purport nor intend to prohibit Plaintiff in Error from doing an interstate business in Mississippi, but only prohibits local, or intrastate business.

This point is being argued in this Court for the first time. It was not presented or made to the Supreme Court of Mississippi. It will be manifest, from a reading of the original bill, that it did not contemplate the denial to Plaintiff in Error of the right to do an interstate business in the State of Mississippi. I think it very clear that the Act itself does not purport to deny this right to Plaintiff in Error. It is admitted, of course, by the State, that the Legislature could not deprive the foreign corporation of its constitutional right to do an interstate business in the State of Mississippi.

It would seem that the Plaintiff has fallen into error by contending that the decree (Tr. 112) of the lower Court provides for a forfeiture of the right to do an interstate business. That this contention is without merit is clearly shown by the last paragraph in the decree, wherein it is said:

> "It is further ordered by the Court that the said Crescent Oil Company be and the same is hereby perpetually enjoined from doing an intrastate or local business in the State of Mississippi, and its right to do such intrastate or local business in this State be, and the same is hereby forfeited," etc.

The inclusion in the decree of forfeiture of the right to do an intrastate business, would be an exclusion of any inhibition against the right to do an interstate business, under the familiar rule.

The Supreme Court of Mississippi, in passing on this case, stated the application of the decree generally as follows (Tr. 121):

> "The Oil Company in this case is perpetually enjoined from operating a cotton gin in

> Mississippi, and was given ninety days in which to dispose of its two gins in the State. The defendant Oil Company is also enjoined from doing an intrastate business in the State of Mississippi, and is enjoined from violating the Anti-Trust Law."

It was never suggested in brief or argument, in the Supreme Court of Mississippi, that the decree of the Chancellor was intended in anywise to prohibit the Oil Company from engaging in interstate business. It was argued by the Attorney General that contention of the Oil Company that it must own cotton gins in Mississippi, in order to operate its oil mill in Tennessee could not be sound, for the reason that the oil mill could buy seed in the open market in Mississippi, just as other oil mills were doing.

The attention of the Court, and of counsel for Plaintiff in Error, is directed to the fact that by inadvertance the quotation on page 5 of brief for Plaintiff in Error is stated to be a quotation. It is evidently intended as counsel's view of what the Mississippi Court substantially held.

I submit, therefore, that the decree of the Mississippi Supreme Court should be affirmed.

Rowe Robertson

Attorney General.

INSERT CONTAINING FIRST PARAGRAPH OF COURT'S OPINION, erroneously omitted in printed brief:

"Sykes, J., delivered the opinion of the court.

This is the second appearance of this case in this court. Upon the former appeal we held that chapter 162 of the Laws of 1914 (section 4750 et seq., Hemingway's Code), was constitutional. This case is reported in 116 Miss. 398, 77 So. 185, and reference is here made to that report for a more complete history of the case. Upon the remand of the case to the chancery court the oil company upon motion was allowed to make the following amendment to its answer:

Attorney General.

APPENDIX.

CRESCENT COTTON OIL COMPANY

vs.

STATE OF MISSISSIPPI.

121 Miss. 615; 83 So. 680.

OPINION OF THE MISSISSIPPI SUPREME COURT.

"Respondent, Crescent Cotton Oil Company, would show that it is engaged, and had been for a long time prior to the passage of the Act of 1914, mentioned in the said bill, engaged, in the operation of a cotton oil mill in the State of Tennessee, and in order to procure seed to run the said oil mill was during all of said time engaged in the buying of cotton seed in the State of Mississippi, and that all seed bought in the State of Mississippi were shipped in interstate commerce from the State of Mississippi into the State of Tennessee.

"This respondent would further show that conditions arose which rendered it impossible for a person not operating a gin to compete successfully with a person owning a gin in the purchase of cotton seed.

"Respondents would show that in order to stay in the market and continue to buy seed at Ruleville, to be so shipped in such interstate commerce, it was necessary for it to acquire and operate a gin plant, which it did in 1910, and has continuously operated same since that time, and that the ownership and operation of said gin was a means and instrumentality made use of by this respondent in carrying on its business of cotton seed buyer and interstate shipper of cotton seed, and that the operation of said gin was an incident to the business of cotton

seed buyer, and was a necessary and essential incident.

"Respondent would further show that to deprive it of the right to own and operate its gin plant will greatly burden and destroy its business of interstate commerce, in the shipment of cotton seed from the State of Mississippi into the State of Tennessee, and would be in conflict with the commerce clause of the Constitution of the United States, being subdivision 3, Article 1, Section 8. Respondent would further show that it is now engaged in no business in the State of Mississippi, and was not at the time of the passage of this Act or the filing of this suit, or at any time prior thereto, except such as is necessary to acquire cotton seed and ship them in interstate commerce and incident to such business of interstate shipper of cotton seed."

The testimony in the case for the complainant showed that at various and sundry times when the other cotton gins at Ruleville would not agree to sell to the defendant oil mill a certain amount of seed bought by them, the defendant would put down the price of ginning below its actual cost, for the purpose of destroying competition in ginning. The testimony also showed that the ginner has a great advantage in the buying of cotton seed over one who doesn't operate a gin; that at Ruleville it is almost the invariable custom of the cotton owner who wishes to sell his seed to sell it to the one who does his ginning. From the testimony it appears that the ginning business of the appellant company at Ruleville is operated in this manner. The owner of the cotton in the seed brings his cotton to the gin, and if he wishes to sell the seed to the gin the cotton is then ginned, and the seed blown into the seed house of the defendant. The lint cotton is then baled and gotten by its owner. It seems from this testimony that the defendant company actually negotiated for the purchase of the seed before the cotton was ginned. If the owner of the cotton does

not sell his seed to the gin the seed are not blown into the seed house of the gin, but are reloaded on the wagon of the owner. The record does not show what proportion of the seed of cotton ginned by the defendant company is thus purchased by it. One who operates a cotton gin is thereby enabled to buy a larger quantity of seed, and at a more reasonable price than he would did he not operate a gin. In other words, the advantages in operating a gin are that the ginner is thereby given a better opportunity to buy seed from the person who gins with him, and also probably at a lower price, than if he did not own and operate gin. The manager of the defendant oil company testified that in order for him to buy as much seed as he needed in his own mill business and at an advantageous price, it was necessary for him to operate cotton gins. He also testified that his mill operated eleven different cotton gins, two being in Mississippi, and the others probably in Arkansas and Tennessee. The testimony for the complainant in the case further shows that the seed bought by the other gins at Ruleville were sold to other oil mills. That it was usually customary for them to make arrangements with some oil mill to sell the seed bought by them to these mills for a certain profit. The testimony for the defendant also shows that it made money from its ginning operations at Ruleville. From all the testimony in the case, we think it proves that an oil mill in operating a gin is enabled thereby to purchase a larger volume of cotton seed at a lower price than is possible by being forced to go into the open market for cotton seed, or having to buy these seed from other gins.

The uncontradicted testimony in the case shows that all of the seed bought by the defendant company from its ginning customers were bought for the purpose of shipment, and were actually shipped to its oil mill in Memphis, Tenn. To use the phrase of the general manager of the defendant company,

this gin was used as a feeder for its oil mill in Memphis, Tenn., meaning that its principal object and purpose in running the gin was to enable it advantageously to purchase these seed from its customers for shipment to its oil mill in Memphis.

The decree of the chancery court found that the Crescent Cotton Oil Company was guilty of violating the above law, and also of violating the Anti-Trust statute. Chapter 119, Laws of 1908 (Section 3283, Hemingway's Code). The Oil Company in this decree is perpetually enjoined from operating a cotton gin in Mississippi, and was given ninety days within which to dispose of its two gins in this State, in default of which a receiver is to take charge of these gins and sell them at public auction to the highest bidder, in thirty days. The defendant Oil Company is also perpetually enjoined from doing an intrastate business in the State of Mississippi, and is enjoined from violating the Anti-Trust law. For the violation of Chapter 162 of the Laws of 1914 (Sections 4752-4756, Hemingway's Code), the defendant company was fined one thousand nine hundred dollars, and for a violation of the Anti-Trust law it was fined one hundred dollars. The decree also provides that the defendant Oil Company shall forfeit its right to do business in the State of Mississippi. From this decree this appeal was prosecuted.

It is the contention of the appellant, and ably presented in brief and oral argument, that the question now before the Court is different from that on former appeal; that the testimony here shows that the defendant Oil Company was engaged in interstate commerce, namely, in shipping cotton seed from Mississippi to its oil mill in Tennessee; that as an incident to this interstate commerce and in order to obtain what seed it needed at a reasonable price, it was necessary for it to operate the two cotton gins in Mississippi; that the operation of these two gins is but an incident of its interstate com-

merce business, namely, that of shipping cotton seed from Mississippi to Tennessee; therefore, that it is a burden on, and an interference with, interstate commerce to prohibit this mill under these circumstances from operating gins in Mississippi; that the gin is but an incident, and not the dominant object or business of the defendant company; that in this case the interstate commerce is the paramount business, and the operation of the gin a mere incident in aiding and assisting the carrying on of the interstate business. To sustain this contention the learned counsel for appellant rely upon the cases of

Pullman Palace Car Co. v. Kansas, 216 U. S. 65; 30 Sup. Ct. 232; 54 L. Ed. 385.

Western Union Tel. Co. v. Kansas, 216 U. S. 1; 30 Sup. Ct. 190; 54 L. Ed. 355.

Ludwig v. Western Union Tel. Co., 216 U. S. 146; 30 Sup. Ct. 280; 54 L. Ed. 423.

Harrison v. Railroad Co. 232 U. S. 318; 34 Sup. Ct. 333; 58 L. Ed. 621; L. R. A. 1915F, 1187.

In the first two cases above cited the statute of the State of Kansas was involved, which attempted to tax as a charter fee a given per cent. of the entire authorized capital stock of a foreign corporation as a condition of its continuing to do a local business in the State. This was held to be a burden and a tax on the company's interstate business and on its property located or used outside of the State. The Ludwig case is quite similar, involving a statute of the State of Arkansas.

The Harrison case holds that the right of a foreign interstate highway company to remove a case to the Federal court under proper circumstances cannot be prohibited by a State statute.

None of the points actually decided in any of these cases is authority or applicable to the point before the Court. The question of what is or what is not a burden on, or an interference with, interstate com-

merce is ably discussed in these opinions, especially in the case of *Western Union Tel. Co. v. Kansas, supra.* In that case Mr. Justice Harlan reviews at length the decisions of the Supreme Court of the United States bearing upon this question. It is to be noted, however, that every case above cited is one in which the principal business of the corporation was interstate business, though these corporations also did an intrastate business. In the case at bar it is admitted by counsel for appellant that the ginning of cotton is not interstate commerce. This is undoubtedly true under all of the authorities. But counsel contends that the ginning and the interstate commerce are so interwoven and intermingled that they are inseparably connected in this case because of the fact that appellant was engaged in interstate commerce in shipping the cotton seed from Mississippi to Tennessee. In this case, however, after a price had been agreed upon for the cotton seed, and the seed thereby sold to the defendant company, it was necessary for the seed to be separated from the cotton by the process of ginning. In this ginning process the seed of the appellant were blown into his seed house. After which time, either immediately or at a later date, the seed were shipped by appellant in interstate commerce from Mississippi to Tennessee. The buying of the cotton seed was not interstate commerce, the ginning of the cotton was not interstate commerce, and it only became interstate commerce after it had been tendered to and accepted by the interstate carrier for transportation from Mississippi to Tennessee. It makes no difference what the purpose of the appellant company was in erecting and operating its ginning plants at these two points in Mississippi. By their operation it was doing what is well recognized as a business, namely, the ginning of cotton within the State of Mississippi. It is well settled by all of the authorities that the State has a right to regulate its internal affairs, and a ginning plant operated in Missis-

sippi is of this classification. In one sense of the word, ginning is manufacturing seed cotton into lint cotton and cotton seed.

The purchase of the cotton seed is a separate and distinct transaction from the ginning of the seed, and the ginning of the seed is a separate and distinct transaction from the shipping of these seed from Mississippi to Tennessee. In other words, before these seed become a part of interstate commerce, or before this defendant company becomes engaged in interstate commerce in this transaction, it has to do three things, namely, purchase the seed, gin the cotton, and then deliver these seed to a carrier for interstate shipment. The fact that the defendant company had purchased the seed from the owner before the ginning of the cotton, and was the owner of the seed at the time of the ginnning, and intended at some future time to ship these seed from Mississippi to Tennessee, does not make the ginning of this cotton interstate commerce.

In the case of *Kidd v. Pearson,* 128 U. S. 1; 9 Sup. Ct. 6; 32 L. Ed. 346, the Supreme Court of the United States through Mr. Justice Lamar, in holding a law of the State of Iowa, authorizing the abating as a nuisance of a distillery used for the unlawful manufacture and sale of intoxicating liquors, not unconstitutional as an attempted regulation of interstate commerce, in part says:

> "We think the construction contended for by plaintiff in error would extend, the words of the grant to Congress, in the Constitution, beyond their obvious import, and is inconsistent with its objects and scope. The language of the grant is: 'Congress shall have power to regulate commerce with foreign nations and among the several states,' etc. These words are used without any veiled or obscure signification. 'As men whose intentions require no concealment generally employ the words which most directly

and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said.' *Gibbons v. Ogden,* 22 U. S. (9 Wheat.) 9; 6 L. Ed. 23.

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term as given by this Court in *County of Mobile v. Kimball,* 102 U. S. 691, 702; 26 L. Ed. 238, 241, is as follows: 'Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does

not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests —interests which in their nature are, and must be, local in all the details of their successful management. * * *

"It is true that, notwithstanding its purposes and ends are restricted to the jurisdictional limits of the State of Iowa, and apply to transactions wholly internal and between its own citizens, its effects may reach beyond the state by lessening the amount of intoxicating liquors exported. But it does not follow that, because the products of a domestic manufacture may ultimately become the subjects of interstate commerce, at the pleasure of the manufacturer, the legislation of the state respecting such manufacture is an attempted exercise of the power to regulate commerce exclusively conferred upon Congress. * * *

" 'As has been often said, "Legislation (by a state) may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution," unless, under the guise of police regulations, it "imposes a direct burden upon interstate commerce," or "interferes directly with its freedom." *Hall v. DeCuir*, 95 U. S. 485 (24 L. Ed. 547, citing authorities). * * *

"*** The manufacture of intoxicating liquors in a state is none the less a business within that state because the manufacturer intends, at his

convenience, to export such liquors to foreign countries or to other states. * * *

"Does the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution. * * * There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the state; * * * that such goods do not cease to be a part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another state, or have been started upon

such transportation in a continuous route or journey." *Coe v. Errol*, 116 U. S. 517 (6 Sup. Ct. 475), 29 L. Ed. 715.

Another case directly in point is that of *Hammer v. Dagenhart*, 247 U. S. 251; 38 Sup. Ct. 529; 62 L. Ed. 1103; 3 A. L. R. 649; Ann. Cas. 1918E, 724. In this case the Court held that Congress did not have authority under the commerce clause of the Constitution to pass a law to control interstate shipments of child-made goods. In the course of his opinion Mr. Justice Day said:

> "The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the states who employ children within the prohibited ages. The act in its effect does not regulate transportation among the states, but aims to standardize the ages at which children may be employed in mining and manufacturing within the states. The goods shipped are of themselves harmless * * * when offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the commerce power.
>
> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation. 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to an-

other state.' Mr. Justice Jackson *in re Green* (C. C.), 52 Fed. 113,"—citing authorities.

The above two authorities from which we have so liberally quoted, and the authorities cited by them, sustain the proposition that it makes no difference for what purpose the appellant operated this gin or what was his intention with reference to the cotton seed he bought from the owner; that the ginning is an entirely separate and independent and local business, and is not interstate commerce; and this law which prohibits this mill from owning the gin is in no sense a burden on interstate commerce.

The testimony for the complainant in the case shows that the appellant attempted to destroy competition by putting down the price of ginning below its actual cost. This was not a violation of either section (m), (n), or (o) of the anti-trust law as alleged. That part of the decree so finding is therefore reversed, and the fine of one hundred dollars annulled and set aside. The remainder of the decree is affirmed.

Affirmed in part, and reversed in part.

Ethridge, J., having been of counsel, took no part in the decision of this case.

CRESCENT COTTON OIL COMPANY *v.* STATE OF MISSISSIPPI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 41. Argued October 17, 1921.—Decided November 14, 1921.

Plaintiff in error, a Tennessee corporation, engaged in the manufacture of cotton-seed oil in that State, finding it impracticable to carry on the business successfully when purchasing its supply of cotton seed from ginners or from brokers, acquired and operated cotton gins in Mississippi and other States, where it ginned cotton for cotton growers, purchased from them the seed thus separated from the fiber and then shipped it to its Tennessee factory. Mississippi passed a law forbidding corporations interested in the manufacture of cotton-seed oil from owning or operating cotton gins, except of a prescribed capacity and in the city or town where their oil plants were located.

Held: (1) That, since the ginning was merely manufacture, and the seeds were not in interstate commerce until purchased and com-

mitted to a carrier, the gins were not instrumentalities of interstate commerce and the prohibition of their operation did not infringe the company's rights under the commerce clause. P. 135.

(2) That the prohibition did not deny to the company the equal protection of the laws in applying to corporations and not to individuals, because the inherent difference between corporations and natural persons sustained the classification and because it might be assumed, in the absence of any contrary showing, that only corporations were engaged in operating both oil mills and cotton gins when the act was passed. P. 137.

121 Miss. 615, affirmed.

Error to a decree of the Supreme Court of Mississippi, in a suit by the State, imposing a penalty on the plaintiff in error, forfeiting its right to do local business, enjoining it from operating its cotton gins and requiring it to dispose of them within a prescribed time.

Mr. J. B. Harris, with whom *Mr. Thos. A. Evans* and *Mr. A. W. Shands* were on the brief, for plaintiff in error.

The Act of June 18, 1910, amending the Interstate Commerce Act, extended the conception of transportation, so that it does not await actual delivery of goods to a carrier. This has a bearing on the present case.

If the State could not impose a tax upon a local business carried on in connection with interstate commerce, and make the payment of that tax or the filing of statements a condition to the carrying on of the local business, (*Pullman Co.* v. *Kansas*, 216 U. S. 86; *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1; *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146; *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 232 U. S. 318; *International Textbook Co.* v. *Pigg*, 217 U. S. 91; *Atchison, Topeka & Santa Fe Ry. Co.* v. *O'Connor*, 223 U. S. 280; *Looney* v. *Crane Co.*, 245 U. S. 178), manifestly it could not under any guise prevent the carrying on of the local business in this case.

It is conceded that the oil company was in the State for no other purpose than for acquiring cotton seed to be shipped in interstate commerce; and that the operation of

the gin had become absolutely necessary to enable it to carry on its business with success. It is found as a matter of fact that the operation of the gin was a mere feeder to its oil mill in Tennessee; that the cotton seeds were actually purchased in the lint before they were put through the process of ginning and that it was necessary to separate them in order that they might be shipped, and when separated they were blown into the seed house and immediately shipped into Tennessee.

We are insisting here that the local business of ginning, which had been established long prior to the passage of the Act of 1914, had become a necessary agency or corporate facility and instrumentality in carrying on interstate commerce. Therefore, the act as applied to the oil company, being destructive of its interstate commerce, was a violation of the commerce clause of the Constitution.

The state court based its decision upon *Kidd* v. *Pearson*, 128 U. S. 1, and *Hammer* v. *Dagenhart*, 247 U. S. 251. In those cases the court was dealing with the particular state of facts presented. The manufacturing of liquor in the one case and of cotton goods in the other was the dominant business, the purpose for which the distillery and the cotton mill were established. The interstate commerce was merely incidental. In the case at bar, the interstate commerce was the dominant business, the business for the carrying on of which the oil company had entered the State of Mississippi. The ginning was merely incidental to this business, a necessary instrumentality for carrying it on.

There is no question here about any mere intention in reference to the interstate commerce. The oil company was doing no other business in Mississippi.

The act provides that oil mills may operate ginneries located in the town where the oil mill is located. This is

a discrimination against the plaintiff in error and all oil companies whose oil plants are located outside of the State.

The discrimination between corporations and individuals engaging in the same business violates the Fourteenth Amendment. There is no essential difference in the business of operating oil mills and gins by individuals and the same business carried on by corporations. There must be a substantial difference in the business to warrant classification and imposition of burdens upon one class and not upon another class of persons or corporations.

Whether the power exercised is sought to be justified upon the exercise of the police power or under the reserved power to alter, amend and repeal charters or under the general powers in the State to regulate corporations and businesses affected by the public interest, the power must be reasonably exercised. It must be necessary for the protection of the public, and, if a classification, must not be arbitrary but based upon some natural difference which bears a proper and just relation to the classification sought to be made.

Mr. Frank Roberson, Attorney General of the State of Mississippi, for defendant in error.

Mr. Justice Clarke delivered the opinion of the court.

An act of the Legislature of Mississippi, approved March 28, 1914, (designated in the record the "Anti-Gin Act"), prohibits corporations, whether organized under the laws of that State or authorized under the laws thereof to do any local business therein, among other things, from owning or operating any cotton gin, when such corporation is interested in the manufacture of cotton seed oil or cotton seed meal. A penalty is provided for violation of the act, but corporations are permitted to operate their gins for a reasonable time until they may be sold. A pro-

viso permits cotton seed oil companies to operate gins of a prescribed capacity, but only in the city or town where their oil plants are located. Mississippi Laws 1914, c. 162; § 4752, *et seq.* Hemingway's Code, 1917.

The plaintiff in error, a corporation organized under Tennessee Laws, prior to 1914 owned and operated a cotton seed oil mill at Memphis in that State, and two cotton gins in Mississippi. Disregarding the Anti-Gin Act, it continued to operate its two gins in Mississippi until October, 1915, when, for the purpose of enforcing the law, the State, on the relation of its Attorney General, instituted a suit in equity against the company in a county court of chancery, which, after various vicissitudes, resulted in a decree that the act was constitutional, and that the plaintiff in error was guilty of violating it. A penalty was imposed upon the company, its right to do intrastate or local business in Mississippi was declared forfeited, it was perpetually enjoined from operating cotton gins in the State, and it was ordered that, within ninety days, the company should dispose of the two cotton gins which it owned and operated in Mississippi. The company was also found guilty of violating the Anti-Trust law of the State and a penalty therefor was imposed.

This is a proceeding in error to review the decree of the Supreme Court of Mississippi affirming that decree of the county court as to the Anti-Gin Act. The holding that the Anti-Trust laws were violated was reversed by the Supreme Court.

Without proof of it in the record, the case is argued upon the assumption that the statute assailed was enacted in aid of the Anti-Trust laws of the State, under the conviction on the part of the legislature that it was the practice of corporations operating oil mills and cotton gins to depress the price of ginning, regardless of cost, until local competition was suppressed, or brought to terms, and then to charge excessive prices for ginning and to pay

unfairly low prices for seed. There is evidence in the record tending to show resort to such methods by the plaintiff in error.

It clearly appears that in practice it is an advantage to the purchaser of cotton seed to operate gins, not only for the profit that may be made from them directly, but because the grower of cotton often prefers to sell his seed to the company ginning it rather than carry it to another purchaser. It is also in evidence that individuals, as well as corporations, owned and operated gins and that other oil companies than the plaintiff in error obtained their supplies of seed from growers, from gin owners and from brokers.

The plaintiff in error has heretofore relied, and here relies, for its defense, upon the unconstitutionality of the Anti-Gin Act, which it asserts upon two grounds, viz: first, that, as applied to the plaintiff in error, it imposes a direct and substantial, and therefore an unconstitutional, burden upon an instrumentality of interstate commerce; and, second, mildly, that, the act being applicable to corporations and not to individuals owning and operating cotton gins, it denies to the plaintiff in error the equal protection of the laws and therefore offends against the Constitution of the United States.

The basis of the first contention is the claim that it had become impracticable for the oil company to carry on its oil manufacturing business successfully when purchasing its cotton seed supply from other ginners or from brokers, that for this reason the company acquired its two cotton gins in Mississippi, and nine in other States, to obtain the advantage of purchasing seed direct from the growers of cotton, and that all of the cotton seed which it had purchased in connection with its gins was shipped in interstate commerce to its oil mill at Memphis, the gins being, in effect, " feeders " to its oil mill.

These facts, not disputed in the record, it is argued, constitute the gins an essential means and instrumentality of

interstate commerce and that therefore the act imposes a direct and unconstitutional burden on commerce between the States in violation of § 8 of Article I of the Constitution of the United States.

Western Union Telegraph Co. v. *Kansas*, 216 U. S. 1; *Pullman Co.* v. *Kansas*, 216 U. S. 56; *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146; and *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 232 U. S. 318, are relied upon to sustain this contention of the plaintiff in error. In the first two of the cases cited an attempt was made by the State of Kansas to tax interstate carriers on the basis of all of their property, wherever situated, as measured by the capital stock of the companies. In the third case a similar attempt was made by the State of Arkansas.

There was no question in any of these cases but that the principal business of the companies challenging the taxing law was interstate in character and that their chief investment was in property used in and necessary to the conduct of their interstate commerce. The controversy in the cases was as to the incidence of the tax,—whether it was so imposed upon the property of the companies or the stock representing it, as to constitute a direct and substantial burden upon the interstate commerce in which they were engaged.

It is clear that these decisions cannot be of aid in determining the question we are now considering, which is, whether a cotton gin operated by an oil company in Mississippi is rendered an instrumentality of interstate commerce by the fact that the owner of it ships out of the State, for its use in another State, all of the cotton seed which may be purchased in connection with its ginning operations.

The fourth case relied upon, *Harrison* v. *St. Louis & San Francisco R. R. Co.*, 232 U. S. 318, was an attempt on the part of a State to prevent removal of causes from state to United States courts and is, if possible, yet more inapposite.

The separation of the seed from the fiber of the cotton which is accomplished by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in *Kidd* v. *Pearson*, 128 U. S. 1, 20, 21; *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12, 13; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 245; *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S. 36, 38; *Hammer* v. *Dagenhart*, 247 U. S. 251, 252; and in *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134, 151, 152. And the fact, of itself, that an article when in the process of manufacture is intended for export to another State does not render it an article of interstate commerce. *Coe* v. *Errol*, 116 U. S. 517, and *New York Central R. R. Co.* v. *Mohney*, 252 U. S. 152, 155. When the ginning is completed the operator of the gin is free to purchase the seed or not, and if it is purchased to store it in Mississippi indefinitely, or to sell or use it in that State or to ship it out of the State for use in another, and, under the cases cited, it is only in this last case and after the seed has been committed to a carrier for interstate transport that it passes from the regulatory power of the State into interstate commerce and under the national power.

The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede but are not a part of interstate commerce, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied.

There remains the second contention, that the Anti-Gin Act denies to plaintiff in error the equal protection of the laws, because it applies to corporations and not to individuals.

Where, as we have found in this case, a foreign corporation has no federal right to continue to do business in a State, and where, as here, no contract right is involved and there is no employment by the Federal Government, it is the settled law that a State may impose conditions, in its discretion, upon the right of such a corporation to do business within the State, even to the extent of excluding it altogether. *Horn Silver Mining Co.* v. *New York*, 143 U. S. 305; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 83, and cases cited. And in such case the inherent difference between corporations and natural persons is sufficient to sustain a classification making restrictions applicable to corporations only. *Hammond Packing Co.* v. *Arkansas*, 212 U. S. 322, 343, 344; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 83. And see *Fort Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 533; *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89; *Williams* v. *Fears*, 179 U. S. 270, 276; *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452.

This would be sufficient to dispose of this second contention, but we may add that the law assailed was enacted by the State in the exercise of its police power, to prevent a practice conceived to be promotive of monopoly with its attendant evils. It is clearly settled that any classification adopted by a State in the exercise of this power which has a reasonable basis, and is therefore not arbitrary, will be sustained against an attack based upon the equal protection of the laws clause of the Fourteenth Amendment, and also that every state of facts sufficient to sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, and cases cited; *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342.

The record before us shows that, before the law assailed was enacted, cotton gins had been operated in Mississippi by individuals as well as by corporations, but there is no showing that oil mills and cotton gins were both operated by an individual or by groups of individuals, and we think it may well be assumed, under the rule stated, that because of the larger capital required, and perhaps for other reasons, oil mills and cotton gins may have been operated in that State, only by corporations, and that for this reason the restraint of the evil aimed at by the act of the legislature could be accomplished by controlling corporations only. Assuming this to be the fact when the law was enacted, obviously the classification objected to can not be pronounced so without reasonable basis as to be arbitrary.

A number of minor contentions are discussed in the briefs. These have all been considered, but are found to be not of sufficient substance to deserve special discussion.

It results that the judgment of the Supreme Court of Mississippi will be

Affirmed.